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Questions of the Day.—V. and VI.

THE AMERICAN CITIZEN'S MANUAL

BY

WORTHINGTON C. FORD

TWO VOLUMES IN ONE

NEW YORK & LONDON
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PART I.

INTRODUCTORY NOTE.

What is the relation of the citizen of the United States to the governments under which he lives? This question, which is quite distinct from questions concerning his relations to his fellow-citizens, is continually recurring as the population of the country increases, the interests of the people become more complex, and the interference of government with the rights and privileges of the citizen becomes more general. And it is a problem which, from its nature, is hardly capable of a satisfactory solution; for the conditions are in a state of perpetual change. No sooner are present wants and needs provided for, than new questions arise, demanding attention. This matter of the relation of the governed to the government, is, then, pre-eminently and continually a "question of the day."

But before attempting to show to what extent the powers of government have been exercised in the United States, some knowledge of the machinery of government, its organization and manner of act-

ing, is necessary; and it is, further, important to have clearly set forth the methods of choosing the agents of State action, and the more important points regarding official responsibility and the civil service, for these subjects are more closely connected with the organization than with the functions of government.

Of the difficulties which presented themselves to the editor some idea may be gained from the fact that the organizations of no two State governments are exactly alike; and the editor has therefore confined himself to dealing with only the more essential branches of the subject, taking from the great variety of illustrations offered such as seemed best suited for his purpose. For the convenience of those who may desire to make a more complete examination of the subjects treated of in this volume, a short list of works is added which will be found valuable for reference.

BROOKLYN, NEW YORK,
September, 1882.

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American Citizen's Manual

CHAPTER I.

GOVERNMENT AND ITS FUNCTIONS.

There can be framed no exact definition of government, nor can its functions be so limited and defined as to include and satisfy all conditions that may arise. Government is, in its form and sphere of action, as varied as are the customs and conditions of the people over which it is instituted, nor is it the same among any one people at different periods of its history. In its widest sense, however, government is the ruling power in a state or political society; and with regard to its functions, it may be practically described as the organization of the community for such objects as are best obtained by common action. And while the proper sphere of governmental action is as varied and as much a matter of dispute as is its form, yet the primary object of government is to protect life and property, and to insure to its subjects this protection by a proper definition and enforcement of their rights.

All the various forms of government which are met with may be reduced to three classes, and this distinction into classes depends upon the numerical

relation between the constituent members of the government and the population of the state. A monarchy is government by one man; an aristocracy, by a number of men small in proportion to the whole number of the population; and a democracy, by a number of men large in proportion to the population, or by a majority of the subjects of the state. These three principal forms may be combined, and a large number of mixed forms result; but these mixed forms may all be ranged under one of the three great divisions or classes—monarchy, aristocracy, and democracy,—according to the predominating feature.

Government in the United States.

The government of the United States is democratic in its form; that is, the decision of all matters pertaining to the welfare of the State rests with a majority of the people. But the number of the population is so great, the extent of territory so vast, and the interests at stake so varied and important, that the purely democratic form, in which what concerns all is decided by all, is not practicable; and the actual performance of governmental duties is delegated to a number of officers elected by the rest. And through this method of representation a democracy may exist, although apparently falling under the definition just given of an aristocracy, for the number of the representative bodies, which are the

government, is small in comparison with the number of the governed. But the power does not rest ultimately in these bodies; they are clothed with certain functions by the people, who may at pleasure take them away or modify them, for the people alone are the real rulers.

In addition to this division of labor, by which the powers of government are entrusted to a few, a further saving of labor and an increase of efficiency are secured by a division of the functions of government, according to the size and extent of territory to be governed. It is sometimes said that a citizen of one of the United States is under four governments, national, State, county, and municipal. But when the powers or functions of each of these apparently distinct governments are examined, it is seen that there are but two, national and State. And a further examination will show that these are not separate and distinct governments, but are rather supplementary to one another, each having a sphere of action peculiar to itself. "The Federal and State governments," says the Federalist, "are in fact but different agents and trustees of the people, constituted with different powers and designated for different purposes."

From this dual character of the government it might naturally be supposed that contests would arise as to where the power of the Federal government ends and the State government begins. So

far as was possible this difficulty was obviated by defining the powers of the Federal government in a written instrument, the Constitution, under which the government was formed. And in order to form or constitute the national government such powers as were considered necessary to preserve it and give it effect were originally ceded to it by the people of the States. In general that government was formed for national purposes only, and its functions and powers to effect those purposes are sharply defined by the Constitution. To form a more perfect union, to establish justice, to insure domestic tranquillity, to provide for the common defence, and to promote the general welfare, are all national objects and affect equally the inhabitants of each State. To carry out these objects certain powers, few in number, but adequate in their nature to effect these and other national purposes, are granted to the national government. These powers are, moreover, limited by the Constitution, and extend no further than is granted by that document; and whatever powers are not so ceded, either expressly or by implication, are reserved by the people or have been delegated to the State governments. In all matters of which the national government has cognizance it is supreme, and overrides any State constitution or law that may conflict with its powers. And this is also true in such cases as taxation, in which national and State governments possess concurrent

powers,—the former always taking precedence. This was essential to the existence of the central government, as it effectually prevents any curtailing of its powers through hostile State legislation. At the same time protection against encroachment by the Federal government upon the powers of State is provided by the limitations imposed by the Constitution ; although, it must be confessed, the protection is not so effectual as always to prevent such encroachment.

As all power is, in theory, ultimately inherent in the people, the State government is a creature of the people, and being of limited powers, its sphere of action is also restricted and defined by a written constitution. These constitutions are framed by a body of men elected by the people for this special purpose, and resembling in all respects a legislative body, save that its action is confined to this immediate matter, and when it has accomplished this, its powers end.[1] By these constitutions State government is instituted to secure to the people certain inalienable rights, among which are those of life, liberty, and the pursuit of happiness. These are also objects of the national government. But as the latter is instituted for national purposes only, so the State government exists for State purposes only, and consequently its powers are limited to that extent of territory which is comprised in the State. The central government is one of general and delegated

[1] See Jameson, "The Constitutional Convention."

powers, while the State governments have all local and undelegated powers. Hence, if it is desired to know what power the central government has, the Federal Constitution must be looked into, for it has no other than what is there delegated; but if it is desired to know what power belongs to the State government, not only must the Federal Constitution be examined, for whatever powers are not prohibited either by express language or necessary implication, belong either to the State government or the people, but also the State constitution, to see if the people have conferred upon it the power in question.[1]

In order to make the State government more effective by not burdening it with details that are strictly local in their character, the territory of the State is divided into a number of divisions called counties, and these counties into townships, and over each of these divisions is placed a local government clothed with sufficient powers to enable it to regulate and control such matters as by their local

[1] A constitution should be elastic and capable of amendment, so that it may be adapted to changed circumstances. The Federal Constitution is subject to amendment on the vote of two thirds of both Houses of Congress, or on the application of the Legislatures of two thirds of the several States; and such amendments, when framed in convention, must be ratified or accepted by three fourths of the States in whatever manner is proposed by Congress. With regard to amendments to State constitutions, the amendment is usually prepared and passed upon by the Legislature, and is then accepted or rejected by a vote of the people. In New York State such amendments must pass two successive Legislatures before it can be submitted to the people, the object being to prevent too frequent alterations in the organic law of the State. In the same State the question of revising the constitution must be submitted to the people every twenty years, and a convention for that purpose is then called. In other States the Legislature may take the initiative and call a convention for revision.

character belong to it. Hence arise county and municipal governments, commonly called local governments, which are, however, but branches of the State government, being created by it, and exercising powers under its supervision and control. So that a citizen of this country is apparently under four governments—municipal or town, county, State, and national,—but as each is occupied with a different sphere of action, over different extents of territory and particular classes of needs, they in reality constitute but one complete government, under which all duties and functions are cared for and performed.

But this power is not so absolute as might be imagined. For as all power lies in the people, and as the governments are created for special objects and derive all their powers from the consent of the governed, to the people belong the right of altering or abolishing any government that does not attain the objects for which it was framed, and of instituting instead such a new form of government as seems to them fitting. This does not, however, imply that a State has a right to withdraw from the confederacy, because it or its people believe the action of the national government to be hostile to the interests of the State. It has been determined, and it is now a recognized principle, that in case any conflict of opinion arises between the national and a State government, the will of the individual State is to be subordinated to the higher interests of the confed-

eracy as a whole. By an amendment to the Federal constitution the State governments might be wiped out of existence[1]; and in like manner the State governments might abolish all local governments. But such changes are hardly possible, because the dislike of centralization, or of placing all the power in one government, whether it be State or national, is too strong, and would check any such revolutionary designs.

Branches of Government.

The functions of government may be divided into three great divisions : the making of laws, or legislative ; their impartial interpretation, or judicial ; and their faithful execution, or executive. And in accordance with this division of powers there are three departments of government—the legislative, the judicial, and the executive,—which are generally distinct and co-ordinate departments ; and the more sharply is the line drawn in the functions proper to each department, the greater will be its independence, and the higher will be the efficiency of the government. These three branches of government are distinctly recognized, and the separation of their functions is expressly provided for both in the

[1] At the close of the war many of the Southern States were without any form of government save that of military rule. By the Constitution the United States shall guarantee to every State in the Union a republican form of government ; by which is meant a government in which laws are enacted by the representatives of the people and not by the people themselves. See citations in McCrary, "Law of Elections," § 152.

national and State constitutions. And the State constitutions forbid a person belonging to or constituting one of these departments, to belong to or exercise any of the powers belonging to either of the others, except under certain conditions, when such a course is desirable or necessary. Yet, as will be shown, these departments are not wholly independent of one another, but each one may serve as a check upon the actions of either or both of the others. And not only are they checks upon one another, but one of these departments does, at times, exercise functions which more properly belongs to one of the other departments. Thus, the appointment of officers is properly an executive function ; yet the Senate, a branch of the Legislature, must be consulted in many of such appointments, and to that extent exercises an executive function. Again, the Senate, when trying an impeachment, is performing a duty which is of a judicial character ; and when passing upon contested elections of its members, Congress is exercising a judicial function. Formerly some of the State Legislatures granted divorces, a power which they exercised concurrently with the courts. The exercise of the veto power by the Executive is more of a legislative than an executive act, and in giving his approval to laws the Executive becomes, in reality, a part of the Legislature. Still, generally speaking, the executive, Legislature, and judiciary, are distinct and co-ordinate branches of government.

The Legislative Function.

Chancellor Kent says that the power of making laws is the supreme power in a State, and experience has shown that it is the branch of government which is most apt to enlarge its own sphere of action by encroaching upon the functions of the executive and judicial branches and by assuming powers which properly belong to these latter branches. The most important duty or function of the Legislature is to discuss questions of public policy and to frame such measures as are necessary to further public welfare. While it is a law-making body, it is also a body for deliberation. Any question that is brought before such a body should be decided upon its merits only, and a complete and thorough presentation and discussion of its various aspects, its probable causes and effects, are necessary to secure the proper remedial measures. Freedom of debate is therefore a requisite to the proceedings of the legislative body. Discussion of measures is secured, first, by the organization of the Legislature ; and, secondly, by the rules which govern its proceedings.

Organization. By the Constitution all legislative powers are vested in a Congress of the United States, which shall consist of two branches, a Senate and a House of Representatives. In like manner the legislative power of the governments of the different States is vested in an Assembly, which also consists of two branches, known under different

names. In all the States the upper or smaller House is known as the Senate, and the lower body generally as the House of Representatives. But in Maryland, Virginia, and West Virginia the lower House is called the House of Delegates, and in a few States the Assembly. The two bodies are very generally known as the Legislature.[1] The concurrence of the two Houses is necessary to the enactment of laws.

The division of the Legislature into two branches is to insure against hasty and ill-advised legislation. Naturally, when a measure is thoroughly discussed in two bodies, there will be less liability to such error, and this liability will be further lessened the greater is the difference in the constitution of the two bodies, either with respect to their numbers, the mode of election, or the term of service. These differences are very marked in the national Legislature. The Senate is not only the smaller body of the two, but its members are not chosen directly by the people, but by an intermediate body, the State Legislature; and the term of service is long when compared to that of a member of the House of Representatives. The qualifications required of a Senator are of a higher degree than those of a Representative, but in both instances he must be an inhabitant

[1] "As a collective title (in 1881), therefore, General Assembly is used in twenty-three States; Legislature, by twelve States; General Court, by two States; and Legislative Assembly, by one State; but in all the States, Legislature is very often used as equivalent to the official title."

of the State from which he is chosen. The differences may be illustrated by a table :

	Age.	Citizenship.	Term of service.	How chosen.
Senate,	30	9	6	By the State Legislature.
House,	25	7	2	By popular vote.

—In either case they must be residents of the State for which they are chosen.

There is, further, a difference in the organization of the two Houses which materially modifies their relations to the people : the Senate being rather a body representing the States, while the House of Representatives represents the people of the States.

The Senate is composed of two Senators from each State, and these Senators are chosen by the State Legislatures. The representation is then equal, each State having two Senators and each Senator having one vote ; and no difference is made among the States on account of size, population, or wealth. The Senate is not, strictly speaking, a popular body, and the higher qualifications demanded of its members, and the longer period of service, make it the more important body of the two. The Senate is presumedly more conservative in its action, and acts as a safeguard against the precipitate and changing legislation that is more characteristic of the House of Representatives, which, being chosen directly by the people, and at frequent intervals, is more easily affected by and reflects the prevailing temper of the

times. The Senate is more intimately connected with the Executive than is the lower body. The President must submit to the Senate for its approval the treaties he has contracted with foreign powers; he must ask the advice and consent of the Senate in the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments have not been otherwise provided for. Until 1867 the Senate could assent only to the appointment to office; the removal of an officer depended wholly upon the President, the Senate not being consulted; and this power was subject to grave abuse whenever the Executive changed from one party to another. In 1867 the Tenure of Office Act was passed, and provided that while Congress was not in session, the President might *suspend* any official, but if the Senate on meeting did not concur in such suspension, the officer should resume his place. This practically rendered the consent of the Senate necessary to a removal, because by refusing to assent to a new nomination, the suspended officer would remain in office, as a suspension is not equivalent to a removal. The Senate has sole power to try all impeachments, but it cannot originate proceedings of impeachment.

The manner of choosing Senators was regulated and made uniform by an act of Congress passed in 1866. Before that time in some States they were

chosen *viva voce*, in others by ballots, in some by a separate vote in each House, in others by both Houses meeting and voting as one body. Under the act they are to be nominated in each House by a *viva voce* vote, and if not decided upon in this way, the two Houses meet and vote together until some choice is made.

In case a vacancy occurs when the State Legislature is not in session, the governor may make a temporary appointment; but at the next meeting of the Legislature the vacancy must be filled in the usual way.

The presiding officer of the Senate is the Vice-President of the United States. He is elected in the same manner as the President, for were he chosen from the Senate itself, the equality of representation would be broken. He has no vote save when the Senate is equally divided, and his powers are very limited.

The House of Representatives is elected directly by the people, and is organized on a very different basis than that on which the Senate rests. The number of Representatives that each State is entitled to, depends upon its population. The number of Representatives was originally fixed at 65, which were apportioned among the States in the ratio of one Representative for every 30,000 population, though a State was entitled to at least one Representative even if its population did not amount to 30,000.

At the same time it was provided that this ratio should be altered at the end of every ten years, when a new census of the population should be taken. The last apportionment was made in 1882, and was based on the results of the census of 1880.

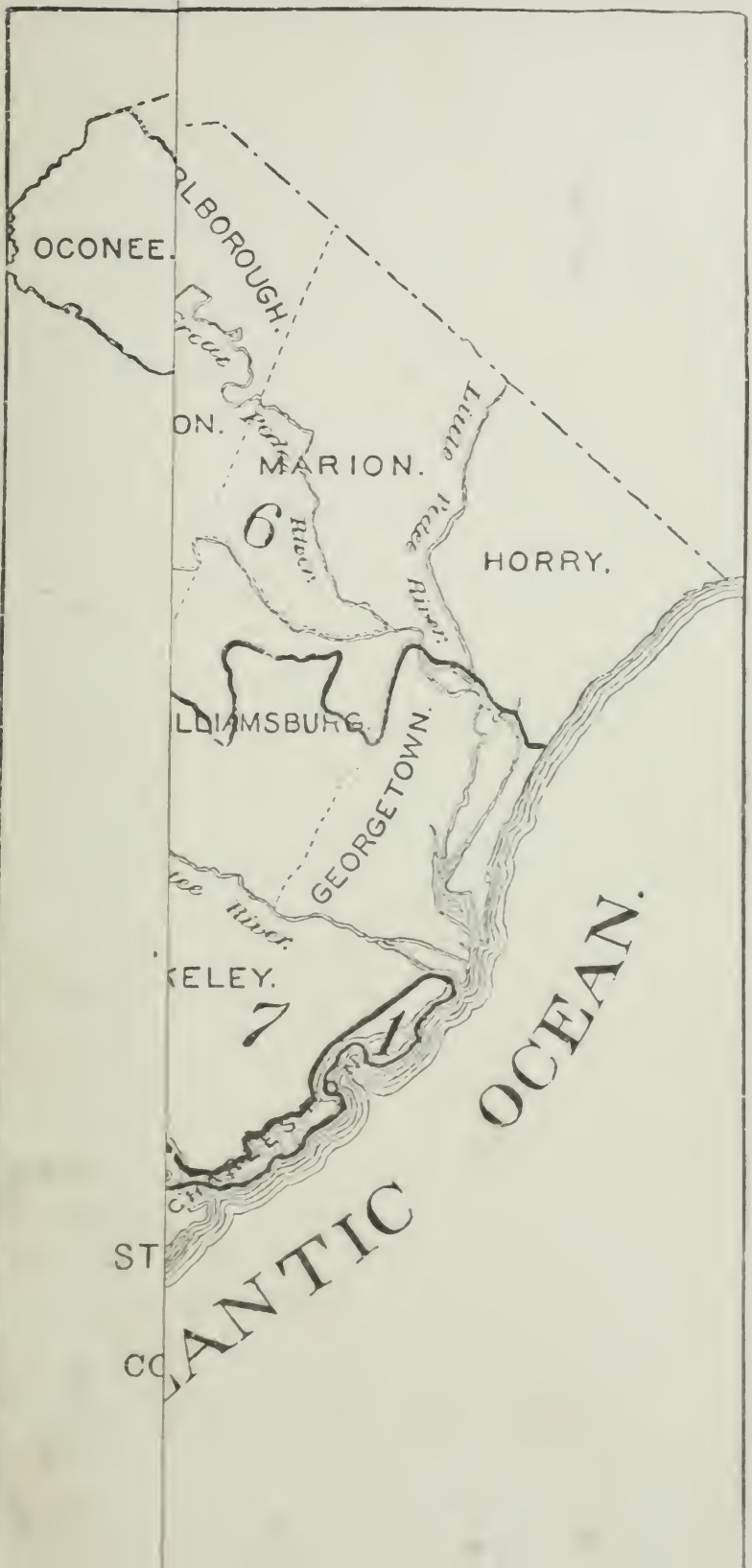
In the first apportionments it was the rule to first determine the number of inhabitants entitled to a Representative, and then by dividing the population of each State by this number, arrive at the number of Representatives the State was entitled to. But of late Congress determines the number of members the House shall contain, and then apportions them among the States in proportion to the respective populations. The following table will show how this branch of the Legislature has increased.

Year.	No. of Representatives.	Being one for every
1792	106	33,000 inhabitants.
1802	141	33,000 "
1811	181	35,000 "
1822	210	40,000 "
1832	240	47,700 "
1842	240	70,680 "
1853	233	94,000 "
1862	241	128,215 "
1872[1]	292	135,293 "

Two methods have been adopted for the election of Representatives, the one called the general ticket sys-

[1] Between 1872 and 1882 Colorado became entitled to one Representative, making the total number 293.

tem, the other the district system. In the former the qualified voters of the State were allowed to vote for every Representative to which the State was entitled. Each Representative was thus elected by the whole State. In the latter method the State was divided into a number of districts, and each district voted only for its immediate Representative. By an act of Congress of 1842, to create uniformity on this subject and to afford a more equal representation of the inhabitants of each State, it was prescribed that the Representatives in each State should be elected by the voters in districts composed of contiguous territory and equal in number to the number of Representatives the State is entitled to ; each district to contain, as nearly as possible, the same number of inhabitants, and no district to elect more than one Representative. This necessitates a redistricting of the State with every change in the number of Representatives assigned to it, and has been subject to abuse from party motives in more than one instance. Thus the noted "shoe-string" district in Mississippi is five hundred miles long and about forty miles broad ; it contains no considerable town save Vicksburg, and is almost wholly rural. Another instance is the "dumb-bell" district in Pennsylvania, which resembles the shape of that object. A very recent instance of such a curious division of the State for political purposes has arisen under the apportionment of Representatives of 1882 in the


OCONEE.
MARION.
HORRY.
GEORGETOWN.
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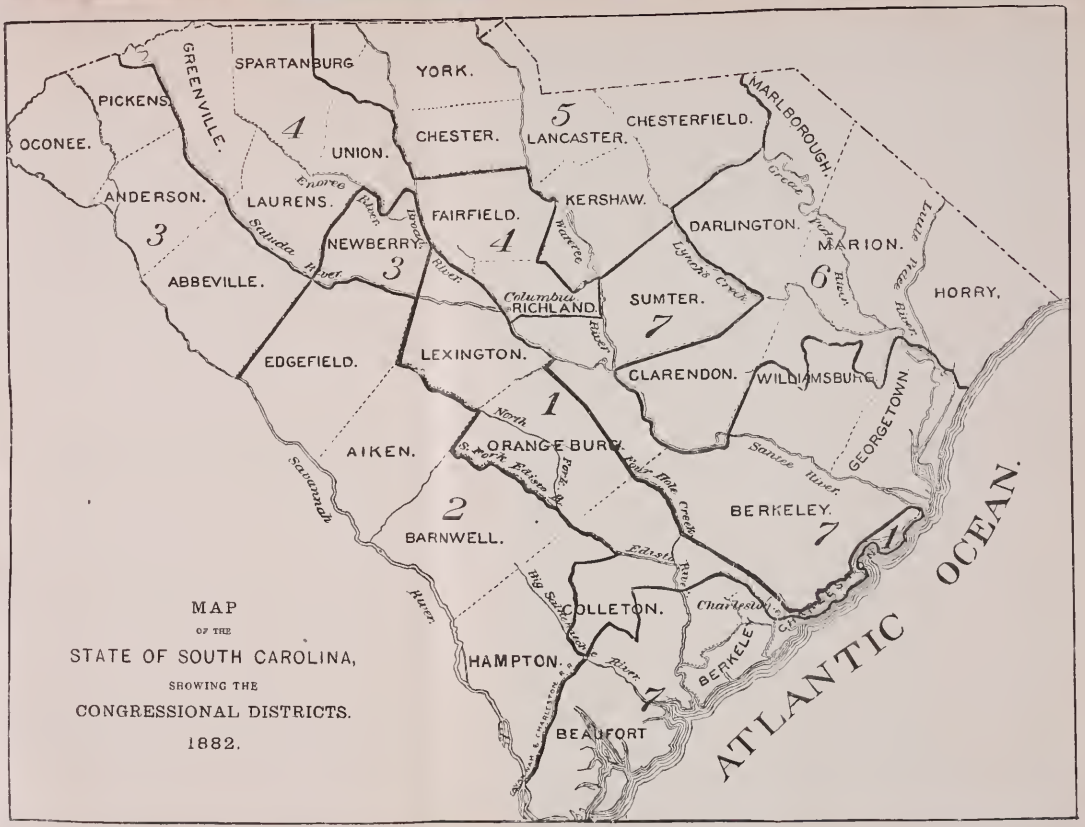
MAP
OF THE
STATE OF SOUTH CAROLINA,
SHOWING THE
CONGRESSIONAL DISTRICTS.
1882.
GREENVILLE.
SPARTANBURG
YORK.
PICKENS.
OCONEE.
4
UNION.
CHESTER.
5
LANCASTER.
CHESTERFIELD.
MARLBORO'.
ANDERSON.
LAURENS.
Enoree River
FAIRFIELD.
KERSHAW.
DARLINGTON.
Pee Dee River
Little Pee Dee River
3
Saluda River
NEWBERRY.
4
Broad River
Wateree
Lynches Creek
MARION.
ABBEVILLE.
3
Columbia
RICHLAND.
SUMTER.
6
HORRY.
7
EDGEFIELD.
LEXINGTON.
CLARENDON.
WILLIAMSBURG
GEORGETOWN
1
North
S. Fork Edisto R.
ORANGEBURG.
AIKEN.
Savannah
Santee River
Four Hole Creek
2
BERKELEY.
7
BARNWELL.
Edisto River
Big Salkehatchie River
COLLETON.
Charleston
HAMPTON.
BERKELEY
4
BEAUFORT
ATLANTIC OCEAN.

State of South Carolina. Thus, the manner of forming the seventh district, as shown on the accompanying diagram, proves how elastic the provision that districts must be composed of contiguous territory may be. The special peculiarity of this district, apart from its remarkable general outline, lies in the fact that the narrow strip connecting the two parts is completely covered at high water, and the "land" is contiguous only at low water. Nor is the first district any the less remarkable, as it is intended to include the narrow strip of territory running between the two parts of the seventh district.[1] In these instances the curious shapes were laid out for political reasons, so as to assure the return of a Representative belonging to one of the political parties. The actual redistricting of the State is left to the Legislature of the State. Congress merely designates the number of Representatives a State is entitled to, and thus determines the number of districts the State shall contain; but it leaves the actual division to the State.

In case a State becomes entitled to an additional Representative, and the Assembly fails to redistrict the State, the new member is voted for on a general ticket by the voters of the whole State, and he is known as a "Congressman-at-Large."

[1] This example is mentioned as an aggravated instance of the means employed by parties to gain their end; and although it happens to be one which was done by the Democratic party, yet instances almost equally arbitrary may be attributed to the Republican party.

Should a vacancy occur, the governor, by proclamation, orders a special election to be held in the district where the vacancy has occurred, but the member so elected serves only for the unexpired term of his predecessor.

A territory having a regularly organized territorial government, that is, having a governor, judges, and certain other officers appointed by the President, is entitled to send one delegate to the House of Representatives. Such a delegate, however, has but limited rights, and although he may take part in the debates, he has no vote. The District of Columbia, although it was constituted a territory and received a territorial government in 1871, cannot send a delegate to Congress.

The House of Representatives has the sole power to institute proceedings of impeachment against officers of government. But its powers end with preparing the articles of impeachment, and the actual trial is held by the Senate.

The presiding officer of the House is the Speaker, and is chosen from among the Representatives. He is not, like the Vice-President, without important powers, for he appoints the various committees of the House, in which most of the bills to be acted upon by the House are prepared. This patronage, or power of appointing, makes the speakership sought after, and, like all such offices, it is often filled subject to "bargains," "trading," and other devices

among the candidates to secure a majority of the votes.[1]

Each House is very properly made the sole judge of the election returns and qualifications of its members, for there is no other branch of the government to which this power could safely be trusted. With every Congress there arises a contest between the rival candidates over a seat in the House, each claiming to have been elected by a majority of legal votes. In such cases it is the duty of the House to examine into the returns, and, in accordance with the results of such examination, declare which contestant is entitled to the seat. When the two political parties in the House are evenly balanced, party spirit plays an important part in such contests, and it is no infrequent event, under such conditions, for a contested seat to be given to one whose only recommendation is that he is of the same politics with the dominant party in the Houses, and without any regard to the legal aspects of the case.

Each House also determines the rules of its proceedings, and punishes or expels its members, but in the case of expulsion, a two-third vote is required. Each must keep a journal of its proceedings, and publish whatever parts do not require

[1] When the rule giving the appointment of committees to the Speaker was first adopted in 1789, it provided that when the committee consisted of more than three members, they were to be elected by ballot. This rule has, however, been long inoperative, and not one of the forty-three Standing Committees of the House contains so few as three members. The member first named on any committee is the chairman. The general duties of each committee are given in the Rules of the House of Representatives.

secrecy; the proceedings in "executive session" of the Senate are always secret, although the secrecy may be removed by a subsequent vote of the house. On the demand of one fifth of the members present the yeas and nays may be called and are entered in the journal. The importance of this provision can hardly be overestimated. It shows to his constituents what the member is doing, and how he votes on a particular measure. So far as it serves this purpose this publicity is a salutary check on the member, for he may be called to account for his vote by those whose interests he represents. Still in some cases a demand for the yeas and nays is resorted to by those who are opposing a measure, and make the call for the purpose of delaying action.

The members of Congress enjoy certain important privileges which serve to protect and secure independence in their judgment and action. In order that the transaction of business may not be interrupted, the members are exempt from arrest while attending at the sessions of their respective Houses, or while going to or returning from the same, except for treason, felony, and breach of the peace (which has been construed to include all criminal offences, so that the exemption from arrest extends only to civil matters). And in order to secure perfect freedom of debate the members shall not be questioned in other places for any speech or debate made in either House; but this applies only to what was

spoken in debate, and if a member causes a libellous speech to be published, he may be held answerable. For its own protection Congress has also power to punish for contempt, when committed by one who is not a member of either House, and what constitutes contempt is not defined, but is left to the judgment and discretion of the House under the circumstances of each case. The power to punish extends, however, only to imprisonment, and this is terminated by the adjournment or dissolution of Congress.

Congress must meet at least once a year; and neither House can, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting. An adjournment of Congress has the effect of terminating all the business which is before it; but if any important and essential measure remains unacted upon, or if, during a recess of Congress, there should occur an emergency requiring legislative action, the President may by proclamation call an extra session of either body, or of both Houses.

Of the legislative powers of Congress nothing need be said in this place, for it will be fully treated of in the second part of this compilation. Suffice it to say that in all matters of legislation the two Houses are an entire and perfect check upon one another. The only right which the House in its legislative capacity enjoys, and which is not equall-

shared by the Senate, is that of originating all bills for raising revenue; and even these bills are subject to revision by the Senate.

Fulness of debate is further secured by the rules which govern the procedure of either House. Thus all bills[1] are required to be read three times in each House, and these readings must be on three different days, unless in urgent cases the House dispense with the rule. The first reading is for information only, and if there be made any opposition, the question is upon the rejection of the bill. If not opposed or rejected it is read for a second time, and the question is then upon its commitment or engrossment. If committed, it is either to a standing or select committee consisting of a few, or to a general committee

[1] A bill is an act in its incipient stage. All bills, save revenue bills, may originate indifferently in either House, and they are usually referred to one of the committees, which reports them back to the House, there to be acted upon. The report of the committee has usually great weight in determining the fate of a measure. As these committees play an important part in legislation, a further description of them will not be out of place. After the second reading a bill is usually referred to its proper committee, and among this small body of members the examination of the measure is made more easily and with greater dispatch than if the whole House should attempt it. The committee reports to the House, and both the bill and report are then considered in the full House. Almost all measures have to pass in this way through committees. A private claim, when referred to a committee in the usual way, is given into the charge of one or more of the members of the committee, as a sub-committee, who then proceed to examine and report upon it. Except upon important measures the House accepts the report of the committee without question.

The House may, by a vote of a majority of its members, resolve itself into a Committee of the Whole House on the state of the Union. In such cases the Speaker leaves the chair, after appointing a chairman to preside in committee. On motion the committee may rise, when the Speaker resumes the chair, and the chairman reports to the House the results of the committee session. When no determination is reached the chairman reports that the committee has had under consideration such a bill, "and has come to no resolution thereon." This committee is an important one, because every motion for a tax or charge upon the people must be first discussed by it.

of the whole House. After discussion in committee the bill is reported back to the House, with or without amendments, and it may be further amended in the House. When a bill is sufficiently matured, the question is upon its engrossment for a third reading; and the bill is again open to debate, but may not be amended. If it passes its third reading in both Houses, and receives the assent of the President, it becomes an act. But at almost every stage of this proceding the bill may be suppressed should a majority so desire. In case of disagreements between Senate and House on a bill, some settlement is attempted by committees of conference in which both Houses are represented. "Incidentally it may be remarked that conference committees have had of late an important influence on legislation. They are small, secret, and homogeneous bodies, and appointed rather than elected. The differences between the Houses are often more apparent than real, and are intended to befog the public. It has become the common remark, 'We will make a record in the two Houses, and then fix it up in conference.'"[1]

It has sometimes been complained that the opportunities for debate are such as to be exposed to abuse, for a minority can block the progress of legislation by merely talking against time.[2] It is doubt-

[1] *N. Y. Evening Post*, Aug. 1, 1882.

[2] In the House all debate may be shut off by moving the "previous question," and nothing can then be done until the previous question has been decided. In the Senate debate can be stopped only by agreement.

ful if any limitations other than those now in existence could be imposed without leaning too far in the other direction and thus leading to hastily considered and insufficient legislation. The tendency to talk has been increased by the great facilities of communication of the present day, by which the reports of the proceedings of such bodies are carried over the country, and through the medium of the press reach the furthermost limits of the land. A member is led to believe that he cannot better show his active interest in the welfare of his State, or prove to his constituents his zeal in their behalf, than by making a speech which is duly printed and circulated over the country, thus keeping him before the people. At one time it was thought that the mere printing of a speech was enough, and speeches that had never been delivered were printed in the official record of the proceedings of Congress; but so great did the scandal become that the privilege was done away with, and the consent of the House is now necessary to the insertion of any speech or even statistical table that is not actually read on the floor of the House during debate. Very recently a long speech in the form of a poem was thus inserted.

The bills before Congress are either public or private measures. The former concern the whole country, while the latter deal with a district, a locality, or an individual. The number of private bills and claims that annually come before Congress is

enormous, and it has become a serious question how this pressure may be relieved. As illustrating the amount of business before each Congress for the last twenty years, but a very small part of which has ever been attended to, and the bulk of which is private bills, the following table may be given.

A statement of bills and joint resolutions introduced in each Congress from 1861 *to* 1881, *inclusive.*

Congress.	Senate bills.	Senate resolutions.	House bills.	House resolutions.
Thirty-seventh, 1861–'63 .	433	137	613	158
Thirty-eighth, 1863–'65 .	485	128	813	182
Thirty-ninth, 1865–'67 .	635	184	1,234	305
Fortieth, 1867–'69 . .	980	244	2,023	476
Forty-first, 1869–'71 . .	1,375	326	3,091	522
Forty-second, 1871–'73 .	1,652	15	4,073	592
Forty-third, 1873–'75 .	1,362	20	4,891	162
Forty-fourth, 1875–'77 .	1,293	33	4,708	196
Forty-fifth, 1877–'79 . .	1,865	72	6,549	250
Forty-sixth, 1879–'81 .	2,224	167	7,257	419
	12,304	1,326	35,252	3,264
		12,304	3,264	
Total	.	13,630	38,516	
			13,630	
Grand total . .	.	. .	52,146	

When the State Legislatures are treated of, it will be seen that steps have been taken to check this

growing evil by provisions or amendments to the State constitutions.

The checks on legislation do not consist alone in such as are laid down by the rules governing the procedure of Congress. The President has the veto power, which is not to overthrow or even obstruct legislation, but which merely forces a reconsideration by Congress of the vetoed measure; and the Supreme Court may destroy the force of a law by declaring its provisions to be contrary to the Constitution.

Such, then, is the organization of the national legislature, and its manner of acting.

The State Legislature.

The State Legislatures are not organized on one uniform plan, but differ among themselves in the manner of apportioning Representatives among their respective populations, in the qualifications required of the members, and in the powers and duties of these bodies. These differences are, however, mere matters of detail, and will not alter in any important particular the general plan of organization that will here be given.

The most essential difference between the national and State Legislatures, apart from their different spheres of action, lies in the representation. In the national Legislature we have seen that the Senate

represents the States, and the House of Representatives the people; the members of the one owing their election to the State Legislature, those of the other to the people. In the two branches of the State Legislature no such distinction exists; nor could any such be made, because when the State governments were formed there were no two such clashing interests as were represented by the State and central governments, and which played so important a part in the formation of the Federal Constitution and in the organization of the government to be exercised under it. It was desirable to make the two branches unlike, but from the circumstances of the case there could not be the same degree of dissimilarity as was adopted in the constitution of Congress. Deriving all its powers from the people of the State, and, moreover, concerned with matters which pertain to the interests of the State, the members of both houses are elected directly by the people.

As far as is possible the two Houses are organized on different principles. Thus, the Senate is the smaller body of the two; its members are elected for a longer term of service, and are chosen from larger districts; and it thus possesses more stability and permanence, and less of local prejudice and local interests. The members of the lower House, representing smaller districts and subject to frequent change, come more directly from the people, and are quicker to reflect public opinion.

For political purposes the State is divided into a number of Senatorial and Assembly districts, the number of each class of districts bearing some relation to the number of members in either House to be chosen. Thus a Senatorial district may coincide with the boundaries of the counties of the State, and each district may be entitled to send one or more Senators to the State Senate. Or the State may be so divided as to give to each division or district, as nearly as may be, an equal number of inhabitants, or even of voters; and in such cases more than one county may be included in the Senatorial district; though to prevent *gerrymandering*, that is, the division of the State in such a manner as to gain an improper political advantage, it is usually provided that in the formation of these districts no county shall be divided, and that they shall consist of contiguous territory. And in like manner the Assembly districts are formed, but as the number is almost always made to depend upon population, a new districting of the State is rendered necessary with every new enumeration of the people, which occurs generally once in ten years. The apportionment is usually made by the Assembly, but in Michigan, where a county is entitled to more than one Representative, the Board of Supervisors, a county institution, makes the necessary division into Representative districts.

Of the qualifications required of [State] Senators and Representatives little need be said; and it will

not be necessary to give the various differences that exist among the States. In general, there are requirements as to age and citizenship, and a certain length of residence in the State, county, or district. Formerly a greater number of qualifications were required: such as the possession of 300 acres in fee (No. Ca.), must be a tax-payer (Ill., Mo., etc.), must be of the Protestant religion (N. H.), or he must be a person "noted for wisdom and virtue" (Vt.). In the Kentucky constitution of 1850, which is still in force, occurs the curious provision: "No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, . . . shall be eligible to the General Assembly." (Art. ii, § 27.)

In order to secure the independence of the legislator, and remove him from outside influences that might bias his judgment, no person holding any office of trust or profit under the United States or the State, shall be eligible to a seat in the State Legislature. Furthermore, in some States no member of the Legislature can receive a fee or serve as counsel, agent, or attorney in any civil case or claim against the State. But apart from these limitations any qualified elector may be elected to the Legislature.

When a vacancy occurs in either House, the governor of the State, or the House in which the vacancy occurs, or the presiding officer of the House, issues

writs of elections to fill such vacancy, the practice differing among the States.

The privileges of State Representatives are very much the same as those of national Representatives, and, like them, they are privileged from arrest in civil process during the session of the Assembly, and for a reasonable period before and after, to enable them to go and return from the same. In Rhode Island the exemption is extended to their property, and their estates cannot be attached within a prescribed period. The proceedings of the Houses are governed by the ordinary rules for regulating the conduct of business in legislative assemblies. But the restrictions on legislation are in many States greater than are to be found in the rules of Congress. Thus in some states (Alabama, Colorado, etc.), a bill must have been referred to a committee of each House and returned therefrom before it can become a law, and thus by a constitutional provision, a committee is made an essential part of legislation.[1] In many States limitations are imposed on the time for introducing measures. Thus in Arkansas, "No new bill shall be introduced into either House during the last three days of the session." And in Colorado, where the session of the Legislature is limited to forty days, no bill, except the general appropriation for the expenses of the government, introduced into either House of the General Assembly after the first

[1] In Kansas *all* bills must originate in the lower House.

twenty-five days of the session, shall become a law.[1]

Again it is very commonly provided that no bill shall contain more than one subject, which must be clearly expressed in its title; and that whatever may be in the bill that is not so expressed in the title shall be excluded. Such a provision is found in the constitutions of Minnesota, Kansas, Maryland, Kentucky, Nebraska, and Ohio. And under somewhat different forms a large number of the constitutions of the other States contain a similar limitation. The provision was intended to prevent the union in one bill of measures that have no proper relation to another, and thus do away with a fruitful cause of log-rolling and corrupt legislation.

The tendency of the Legislature to assume powers which do not properly belong to it, and thus encroach upon the functions that rightly should be exercised by the executive or judicial branches of the government, is constantly increasing not only in the national but also in the State governments.[2] And

[1] These provisions are, however, constantly evaded. A bill introduced in due season may have amendments, which are in reality new measures, added to it after the time when a new bill may be originated has expired. The bill as originally introduced may be, for example, a bill to incorporate the city of Siam. "One of the member's constituents applies to him for legislative permission to construct a dam across the Wild Cat River. Forthwith, by *amendment*, the bill entitled a bill to incorporate the city of Siam, has all after the enacting clause stricken out, and it is made to provide, as its sole object, that John Doe may construct a dam across the Wild Cat. With this title and in this form it is passed; but the House then considerately amends the title to correspond with the purpose of the bill, and the law is passed, and the constitution at the same time saved." Cooley, "Constitutional Limitations," p. 139, note.

[2] See Webster's Speech on the Independence of the Judiciary in vol. iii of his works.

in the matter of special or private legislation the evil is even more apparent in State than in national legislation. Such legislation is arbitrary, and is subject to grave abuses. Fully two thirds of the measures acted upon during each session of the Legislature is of this nature, and could be accomplished by general laws applying to the whole State. The magnitude of the evil has been recognized, and in all the later State constitutions limitations have been placed on the powers of the Legislature. And a further step in this direction is in making the sessions of the Legislature biennial instead of annual, a change that is being generally adopted among the States.

As an example of the constitutional limitations on the Legislature, the provisions of the constitution of Pennsylvania (1873), which are very sweeping, may be cited :

"The General Assembly shall not pass any local or special law—

"Authorizing the creation, extension, or impairing of liens ;

"Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts ;

"Changing the names of persons or places

"Changing the venu in civil or criminal cases ;

"Authorizing the laying-out, opening, altering, or maintaining roads, highways, streets, or alleys ;

"Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of

bridges crossing streams which form boundaries between this and any other State ;

" Vacating roads, town-plats, streets, or alleys ;

" Relating to cemeteries, graveyards, or public grounds not of the State ;

" Authorizing the adoption or legitimation of children ;

" Locating or changing county seats, erecting new counties, or changing county lines ;

" Incorporating cities, towns, or villages, or changing their charters ;

" For the opening and conducting of elections, or fixing or changing the place of voting ;

" Granting divorces ;

" Erecting new townships or boroughs, changing township lines, borough limits, or school districts ;

" Creating offices or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts ;

" Changing the law of descent or succession ;

" Regulating the practice or jurisdiction, or changing the rules of evidence, in any judicial proceeding or inquiry, . . . or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate ;

" Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates or constables ;

"Regulating the management of public schools, the building or repairing of school-houses, and the raising of money for such purposes;

"Fixing the rate of interest;

"Affecting the estates of minors or persons under disability, except after due notice to all parties in interest, to be recited in the general enactment;

"Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the treasury;

"Exempting property from taxation;

"Regulating labor, trade, mining, or manufacturing;

"Creating corporations, or amending, renewing, or extending the charters thereof;

"Granting to any corporation, association, or individual any special or exclusive privilege or immunity, or to any corporation, association, or individual the right to lay down a railroad track;

"Nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law, but laws repealing local or special acts may be passed;

"Nor shall any law be passed granting powers or privileges in any case where the granting of such power and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same or give the relief asked for."
—Art. iii, § 7.

And in § 8 of the same article it is provided that

when a local or special bill is to be passed, for it would be impossible to provide by general legislation against every possible contingency that might arise, due notice of the same shall be published in the locality where the matter or the thing to be effected may be situated, for at least thirty days prior to the introduction of the measure into the General Assembly,—a very proper restriction.

The Executive.

In its ordinary signification the administration of government is limited to executive details and falls peculiarly within the province of the executive department. The Legislature does not execute the laws, it directs what is to be done, and prescribes the manner of doing it, but leaves the actual performance to the executive department. As this performance requires promptness of action and singleness of purpose, all the executive powers are vested in a single officer,—the President in the national government, and the governor in the State. Both are elected by the people, the President indirectly, and

[1] The manner of electing the President and Vice-President is peculiar, and they are the only officers who hold their offices by that mode of election. Thus the final election is made by a number of electors chosen for that express purpose, and forming the *electoral college*. The people of each State choose a number of electors equal to the number of Senators and Representatives to which the State is entitled, and these electors meet on a certain day and cast their votes. In theory each elector exercises his judgment in casting his vote; but under the system of parties the elector is already pledged to vote for the party's nominee, and the result becomes known at the general election when only presidential electors are supposed to be chosen. The meeting and voting of the electoral college has thus become an unmean-

the governor directly, and both possess powers of a similar nature. Thus the President is the commander of the national army and navy, of the State militia when in actual service; the governor is commander of the State forces when not in actual service. The President may, by his veto, compel the Legislature to reconsider a measure that has already passed both Houses; and the State governor possesses a like check on the Legislature.[1] The President may grant pardons and reprieves for offences committed against the United States, except in cases of impeachment; in like manner the governor may grant reprieves, commutation, or pardon after conviction for all offences except treason and impeachment, and may grant such pardons, etc., on any conditions he sees fit to impose. The President by and with the advice and consent of the Senate appoints ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose manner of appointment is not otherwise provided for, and he commissions all the officers of the United States; the governor under the same limitations appoints all State officers whose appointments are not otherwise provided for. Both have certain powers regarding the removal of officers and of filling such vacancies as may occur.

ing formality, and it is doubtful if it has any effect in rendering the selection of a President more simple or less exposed to fraud. It is probable that before the next presidential election some modifications may be made in the present system.

[1] In Rhode Island and Virginia the governor has no veto power.

Both may be impeached, and both have certain powers over the sessions of the Legislature, such, for instance, as calling an extra session.

But there are other subjects in which the powers of the national and State executive are different, and this difference arises chiefly from the sphere of action proper to each. Thus, the President regulates the relations of this country with foreign powers; he may enter into treaties, whether of commerce, extradition, or for general purposes, with foreign powers; and when ratified by the Senate such treaties become a part of the law of the land. All war powers are vested in the President, for he may in emergencies *make* war, although Congress alone can *declare* war. The relations with foreign powers cannot be exercised by the State executive, for they are essentially national relations, and affect all the States; and while the governor may in case of actual invasion call out the militia and repel invasion or suppress insurrection, yet his war powers are of a very limited character. He may do this because the emergency calls for prompt and decisive action; and as for suppressing insurrections, that is more properly a part of the police power of the State, and not a war power.

The subjects that fall under the supervision of the Executive are so varied and numerous that no one person could ever master their details or gain that knowledge of them that an efficient administra-

tion would demand. The real administration is, in the national government, divided among a number of departments, each embracing but a portion of the executive functions. Thus, whatever relates to the intercourse between this country and foreign nations is entrusted to the management of one department; the care and management of revenue and expenditure accounts are given to another, and so on. Over each department is placed a chief, usually known as a secretary or commissioner, who, as a part of the executive department, becomes responsible to the President for the conduct of his department; and these chiefs of departments, in addition to the duties imposed on them by Congress, form an advisory or privy council to the President, and as such constitute the *Cabinet*. The meetings of the Cabinet are secret, and no record is kept of their sessions. And while the President may demand the opinions of the heads of the departments in writing, he is not bound to adopt them. These chiefs of departments are subject to impeachment, and hold office only during the term of the President by whom they were appointed.

In describing in very general terms the powers and functions of each department, we are in reality describing the functions of the executive department of the Federal government. When that government was first formed but three departments were created, that of foreign affairs, war, and treasury. But with

the vast increase in the subjects that are brought before the Executive, the number has been increased to seven, though the chiefs of but six are entitled to seats in the Cabinet. Further additions, such as a department of labor and industry, of commerce, etc., have been recently proposed, but it is believed that the present number is sufficient to insure a proper performance of the manifold duties belonging to the executive department.

The Department of State was created by the act of July 27, 1789, under the title of Department of Foreign Affairs, and ranks as the most important of the departments. It is through this department that all intercourse with foreign nations is held, and in the proper conduct of many of the delicate questions arising in international relations, often depends the question of peace or war. It negotiates all treaties, and the importance of this function may readily be seen when the number and terms of treaties are considered. Not only are there treaties of peace, by which important boundaries are determined or cessions of territory made, or important rights acquired, but there are treaties for regulating the commercial intercourse of nations, for extraditing criminals, and for protecting the rights of subjects or citizens when outside of their own States,—treaties which do not arise from war, but the rejection of which by the Senate, or the infraction in any particular by either contracting party, may become a cause of war. In

fact, in the framing of treaties the Executive may originate legislation, for the provisions of a treaty when accepted by the Senate become a part of the law of the land, and as such take rank with the Federal Constitution, overriding all State legislation that may militate against them. These communications between the governments of nations pass through public ministers, and other public officers duly appointed and representing their respective governments abroad.

In addition to the management of all foreign affairs, the State Department publishes all laws and resolutions of Congress, amendments to the Constitution, and proclamations declaring the admission of new States into the Union. The Secretary of State conducts the correspondence between the President and the chief Executive of the several States; and he is the keeper of the great seal of the United States, and countersigns and affixes the seal to all executive proclamations, to various commissions, and to warrants for pardon of criminals and for the extradition of fugitives from justice.

Next in importance stands the Treasury Department, created by an act of September 2, 1789, and has the management of the public finances. The duties of the Secretary are of a threefold character: he superintends the collection of the public revenues; he supervises the expenditure; and he has the management of the public debt and the national

currency,—on the proper conduct of which depends the public credit, which exercises such an important influence over the prosperity of a nation.

But one of his most important duties is to prepare the estimates of the necessary expenditure of government. Each department prepares, in the autumn of the year, an estimate of what amount of expenditure it will make during the coming year, and these estimates, the items of which are given in detail, are sent to the Secretary of the Treasury who submits them to Congress. In the House they are referred to the Committee on Appropriations, and in the Senate to the Committee on Finance, although the various estimates may be reviewed by other committees which supervise the several departments of government, such as the committees on foreign affairs, naval affairs, pensions, etc. The bill is then discussed in the Committee of the Whole House, in which it is subject to alteration or amendment; and when so amended it comes before the House, and on being adopted is sent to the Senate to be discussed by that body.[1]

The Treasury Department contains a number of bureaus charged with important functions. In addition to the comptrollers and auditors who govern the manner of disbursing the public expenditures authorized by law, there are a commissioner of cus-

[1] The manner of preparing and submitting the budgets of the State government is essentially the same, the comptroller acting in place of the Secretary of the Treasury.

toms, a commissioner of internal revenue, a treasurer, a register, a comptroller of the currency, a director of the Mint, and a solicitor, the last-named being the law officer of the department. In addition to these officers of finance there are others belonging to branches of the public service which, though not pertaining to the regulation of the finances, are under the care of the Secretary. Thus he controls the erection of public buildings, the collection of commercial statistics, the marine hospital, light-houses, buoys, beacons, etc., etc.

The Department of War was created by the act of August 7, 1789, and that of the Navy by the act of April 21, 1806. The duties of these departments, which are fully apparent only in a time of war, are sufficiently indicated by their titles.

The Department of the Interior is of recent formation, being constituted March 3, 1849, and has charge of functions which formerly belonged to other departments. Its duties are varied and important, and are indicated by the titles of the chiefs of the various bureaus :

Commissioner of Patents,
Commissioner of Pensions,
Commissioner of the General Land Office,
Commissioner of Indian Affairs,
Commissioner of Education,
Commissioner of Railroads,
Director of the Geological Survey, and

Superintendent of the Census.

Although a Postal administration was formed by the act of February 20, 1792, the Postmaster-General did not take rank with the heads of the executive departments, and not until 1825 did he become a member of the Cabinet. In like manner the office of Attorney-General was created in 1789, but it was not until 1870 that he became the head of the Department of Justice, and all law officers previously attached to the other departments were transferred, and placed under his supervision. His duty is to interpret the laws, and act as the legal adviser of the President and heads of departments, and to represent the United States before the Supreme Court.

The heads of these six departments form the Cabinet. The seventh department is that of Agriculture, presided over by a commissioner, who is charged with duties of doubtful utility.

There is no body corresponding to the Cabinet connected with the State governments. In the original States of the Union there formerly existed a council, consisting of about seven members elected by the Assembly, and whose duty it was to advise the governor on State matters. But they presided over no executive department, as do the members of the President's Cabinet, unless State officers were from their position entitled to a place in the council. A record of the proceedings of the council was kept, which still further distinguished it from the Cabinet.

In some States the council even exercised some executive functions, as in Virginia, where it shared the administration of affairs with the governor. In Florida the chief administrative officers of the State still form a "Cabinet," and assist the governor in his duties; but as these officers are elective, they do not form a Cabinet in the sense in which the term is used in the national government. In Maine this advisory council is still maintained; but in the other States it has been abolished, and its duties transferred to other officers. Other executive councils are met with, such as those for revising laws, councils of revision, or for filling offices, councils of appointment, but they have never been generally employed.

The chief officers of the State executive are a Secretary of State, attorney-general, auditor-general, and treasurer, all of whom hold their office by popular election. Other officers, such as a State surveyor-general, a State engineer, superintendent of education, inspectors of State prisons, and many others, are to be met with among the different States, and properly form a part of the executive branch of government. But it will not be necessary to describe in detail the functions of these officers. Moreover, many of the officers that are found in the minor divisions of the State, such as sheriffs, coroners, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or con-

trollers, clerks of the courts, district attorneys, and a large number of others, are properly State officers, charged with the performance of a part of the State action, and the nature of their duties is not altered by the fact that they are elected by the inhabitants of the various districts in which they perform their functions. The duties of many of these officers will be shown when the means of protecting life and property, the care of the poor and insane, and the revenue and expenditure of government are treated of. The relations of the executive with the people are so far-reaching, and the number of different officers necessary to carry into effect State action so large, that an enumeration of the chief of these officials must suffice.

The Vice-President and Lieutenant-Governor have no powers, and merely preside over the upper House in the National and State Legislatures, but cannot vote except when the House is equally divided. Contingencies may arise where this power of deciding a vote is of vast importance; but this fact does not alter the general proposition that these officers are of very little importance. In case the chief executive office becomes for any reason vacant, it is filled by one of these officers, the Vice-President in the National, and the Lieutenant-Governor in the State government. Alabama and Arkansas have no lieutenant-governor. In case the governorship becomes vacant, the president of the Senate, chosen by and from among its members, succeeds.

The Judiciary.

There is little of a political nature in the judiciary, and in this it differs from the executive and legislature. Its proper duty is to hear and determine litigated causes, to administer justice, and to interpret and enforce the law, and it must do this freed from the control or influence of government authority. For this reason there is as complete a separation as possible between this branch and the coordinate branches of government, and this is especially marked in the constitution of the Federal courts. Thus, no judge can occupy any other official position; the judges are appointed, and hold their office during good behaviour; and the salary of the judges cannot be diminished during their continuance in office. In the State judiciary the judges are, in a majority of the States, elected by popular vote, and they hold their places for terms which vary within wide limits. This feature will be subsequently referred to. Judges cannot be held liable to a civil action or a criminal prosecution for acts done in the performance of their duty. The only method by which they may be brought to answer for misconduct is by impeachment; however, in some States a judge may be removed by a concurrent vote of both Houses of the Legislature, but the judge against whom the charge is made is allowed to defend himself.

The organization and powers of the judiciary are

properly matters of legal interest, and do not belong in a political manual. Suffice it to say that the Federal system consists of a supreme court, sixty district courts, the number being subject to increase, nine circuit courts,[1] and a court of claims. Each court or class of courts has a particular class of actions to deal with originally, and also certain appellate jurisdiction. In like manner each State has a system of courts which extends to its smallest political divisions. In the Southern and some of the Western States the county courts possess powers respecting roads, bridges, ferries, public buildings, paupers, county officers, and county funds and taxes; but it is more usual to maintain, as far as possible, a separation of the administrative and judicial functions, giving the former to the executive and confining the judiciary to an interpretation of the law.

The Jury System.

In this connection may be mentioned trial by jury, an institution that is expressly recognized by every constitution, State and national, and is justly regarded as one of the best securities of the rights and liberties of the citizen. In this the citizen personally takes an active part in the administration of justice; and he has not only the right to demand a

[1] There are in these minor judicial divisions a number of Federal officers such as district-attorneys, marshals, and deputy marshals, etc., for securing the ends of justice. The United States uses the State jails for its own prisoners, thus saving the expense of maintaining double establishments.

trial by jury when on trial for any crime,[1] but he also has the right of serving on a jury in the trial of a fellow citizen, when called upon to do so.

There are two classes of juries, grand jury and petit jury. The grand jury consists of not more than twenty-four or less than twelve members, the usual number being twenty-three, so that twelve form a majority, and the concurrence of that number is required on any matter that is to be acted upon. A list of the freeholders or tax-payers of the county is prepared, and from this list the Sheriff or Marshal designates by lot the names of those who shall be summoned to serve, and when the requisite number is obtained a foreman is chosen. This organization is called the "impanelling" of the jury. The sessions of this jury are secret, and its duty is to examine into charges against persons that are submitted to it, and after taking testimony, wholly on the side of the prosecution, to determine whether the accusations are true or false. If true it finds "a true bill" against the accused, and the matter then comes up before a court and petit jury for trial. But if the majority are convinced that the charges are groundless, the indictment is labelled "not a true bill," and no further proceedings are taken. While it is usual for the grand jury to pass upon such indictments only as are presented to it by a prosecut-

[1] An inferior class of offences which come before the lowest courts, courts of special sessions, and police magistrates, and offences committed in the army and navy are not tried by jury.

ing officer of the government, it may itself originate prosecutions, by making a presentment or accusation upon its own observation or knowledge. The grand jury is thus a sort of committee for passing upon the question as to whether the evidence submitted to it is sufficient to warrant a trial of the accused.

The petit jury, which is composed of twelve members chosen in the same manner as those of the grand jury, has a very different function. It must pass upon all questions of *fact* that comes before them during a trial, the *law* being decided by the judge. And in order to secure an impartial jury the right of challenge is allowed; that is, one of the parties to the suit may object to a person serving as a juror on the ground that he is prejudiced, or has already expressed an opinion on the matter in question. In addition, a certain number of peremptory challenges, for which no cause need be given, are allowed, the number of such challenges varying with the grade of the offence, and also among the different States. The jury must be unanimous, or no result can be attained, thus being distinguished from the grand jury, in which the decision of a majority is sufficient. It is an open question whether it would not be well to allow a majority, not a bare majority, but say two-thirds or three-fourths of the members, to decide a question. The jury acts as a check upon the power of the judge, and at the same time the

judge limits the power of the jury in his *charge*, in which he instructs them on the law involved.

When summoned the persons selected to serve must do so, unless they are excused by the judge or other officer. In New York City a person may be excused if he can show that he is necessarily absent from the city and will not return in time to serve, or that he is physically unable to serve, or that one of his near relatives is dead or dangerously sick. The following persons are exempt from jury duty: every person who is not at the time he is summoned possessed in his own right or that of his wife, of real or personal estate of the value of $250; ministers of the gospel, professors and teachers in colleges or public schools, practising physicians, and attorneys and counsellors of the Supreme Court in actual practice, provided that any such person is not engaged in any other business; every person holding office under the United States, the State, city, or county of New York, whose duties at the time shall prevent his attendance as a juror; all persons actually engaged in business as pilots or engineers; all captains and other officers of vessels; all consuls of foreign nations; all telegraphic operators; members of the grand jury, and of the State militia, or citizens who have filled a term of service in the militia.[1]

A juror receives a salary which is usually a certain

[1] An act in relation to Jurors in the City and County of New York, passed May 12, 1870.

sum for every day on which he is actually on jury duty.

Territorial Government.

The organization of the Government of a Territory is of a provisional character, being intended only to exist during the time that elapses between the erection of the territory by Congressional enactment, and its admission into the Union as a State. During this period it is under the direct control of Congress. The chief executive office, a governor, is appointed by the President with the consent of the Senate, and holds his office for four years unless removed before the end of that time. He exercises most of the duties that belong to a governor of a State, but his acts are subject to the control of the national executive and Congress. All administrative and judicial officers are appointed by the President. The territorial Legislature is vested with certain powers of local self-government, but Congress may so far legislate for the territory as to add to or subtract from the extent of the territory, or to extinguish the existing government. It is represented in Congress by a delegate who may take part in the discussion of affairs, but cannot vote. When a territory attains a population sufficient to entitle it to one representative in Congress, by a special act it is allowed to frame a constitution, and is then admitted into the Union as a State.

The District of Columbia is a territory, and is under the immediate government of Congress, but is not entitled to send a representative or delegate to that body. Alaska has as yet no organized government, but by special acts of Congress the Secretaries of War and of the Treasury exercise certain powers along the coast.

CHAPTER II.

LOCAL GOVERNMENTS.

As the Federal Government does not undertake to administer matters that concern a single State, so within the State there exist a number of local governments exercising control over local matters which pertain to a limited extent of territory. These governments are concerned with the regulation of counties and townships, political divisions of the State for convenience of government. Such divisions, together with others created for special objects, such as school districts and road districts are formed under general laws of the State, and do not require a special charter, as in the case of cities and towns.

In passing from an examination of the national and State governments to that of counties and townships, an almost entirely different field of investigation is entered upon. In the former there are three great branches of governmental action, the executive, the legislative, and the judicial, each presiding over a separate department of government, and exercising independently the functions that properly belong

to it. The legislative power, moreover, stands pre-eminent in its action, and is in importance equal if not superior to the other departments. The functions of a local government are, on the contrary, almost wholly of an administrative nature, and consist essentially in superintending the collection of taxes, and regulating expenditure. Moreover, all the power possessed by such governments is granted and conferred upon them by the State government, and that, too, by express statutes. So that the officers in such governments are little else than agents of the State. They possess little discretion in the use of their powers, and hence there is little of real legislation in such governments. The regulation of local affairs is entrusted to a single board, one body, thus offering a complete contrast to the organization of the national and State Legislatures. And, besides, the justices of the peace, who represent the judiciary, possess very limited powers as compared with those of the State and national judiciary. So that the executive predominates, and the course of action is all defined and limited by the State Legislature. The county and township are recognized by the Constitution of the State of New York and other States as regular subdivisions of the State for the purposes of government, and thus they cannot be extinguished. But as all grant of power is derived from the State, and may be altered or modified as the State wishes, the State may withdraw all the powers of govern-

ment they possess, and, through its Legislature or other appointed channels, govern the local territory as it governs the State at large. For this reason it is proper to consider these local governments not as separate and distinct governments, but as creatures and agents of the State government.

A county is a division of the State formed for political convenience, and endowed with certain powers of government and administration over local affairs, but which are but a part of the general policy of the State. It is, moreover, a division that is formed by the State of its own will, and not, like municipal corporations, which will be treated of in this chapter, by the solicitation or consent of the people who inhabit them. Its powers are derived from the State, and there is a great difference in these powers among the different States : they generally relate, however, to the support of the poor, matters of county finance, the establishment and repair of highways, military organization, and especially to the general administration of justice. Not only are the powers of the county subject to the control of the State Legislature, but its name, boundaries, and officers are also regulated by legislative enactment.

The powers granted to a school district are of a very limited nature, and relate, as the name would suggest, almost wholly to the care and maintenance of public schools. "They have no powers derived from usage. They have the powers expressly grant-

ed to them, and such implied powers as are neces sary to enable them to perform their duties and no more. Among them is the power to vote money for specified purposes, and the power to appoint committees to carry their votes relative to those purposes into effect. . . . These committees are special agents without any general powers over the affairs of the district, and their powers are confined to a special purpose ; and no inference can be drawn from the general nature of their powers." [1] And the same may be said of road districts.

A township (also called a town) is a subdivision of the county, and possesses certain powers of self government, which, like those of the county, differ in the various parts of the Union. Taking, however, the county and township governments, the different systems may be ranged in three classes according to the political division that forms the unit of government. These classes are called the Township system, the County system, and the Compromise system. In the first the township is the political unit, in the second the county, and in the third the powers are divided, a part being given to the county and a part to the township governments. A somewhat extended notice of these three systems will not be out of place, before passing to the government of municipal corporations, or incorporated towns, villages, and cities.

[1] Harris *vs.* School District, 8 Foster, N. H. 58–61.

In the six New England States the town existed before the county or State, and originally exercised over very limited territories all the powers which are now possessed by the State. This arose from the manner in which they were formed. Wherever there was a collection of dwellings, there was a town, and as the number of such places increased, boundaries were defined, and the township arose which might include a number of the original settlements or villages. The State was formed by a union of such townships, just as the federal government was formed by a union for certain purposes of the States. The township was then entitled to an independent representation in the lower branch of the State Legislature. Originally each town in the State was entitled to such a representative; but in order to apportion representation more strictly with population, Maine and Massachusetts have substituted the district system, which involves a union of smaller towns for the choice of representatives. When the State government was instituted the powers of these towns were very much curtailed by the cession of certain powers they had to make to it; but the town is the political unit. The details of affairs of the town are entrusted to *selectmen*,[1] the number of such vary-

[1] Selectmen appear to have been first chosen in Boston, Mass., in 1634. And in the following year the inhabitants of the neighboring town of Charlestown, ordered, that "in consideration of the great trouble and charge of the inhabitants of Charlestown by reason of the frequent meeting of the townsmen in general, and by reason of many men meeting, things were not so easily brought into a joint issue," eleven men should be chosen to manage such business as shall concern the townsmen, the choice of officers ex-

ing from three to nine, who are elected annually, and are merely superintending officers acting under the votes and direction of the people of the town. The duties of the selectmen are to register voters and to provide means for carrying on elections; to establish fire departments, lay out highways, and in general manage all town affairs. The more important of the town officers, also elected annually, are a town clerk, three or more assessors, three or more overseers of the poor, a treasurer, one or more surveyors of highways, three or more members of school committee, and constables who collect the taxes when no collectors are chosen.

But the most distinctive feature of New England government is the town-meeting, which is purely democratic in form and in principle. Once each year, or oftener, the selectmen assemble all the voters of the town by notice, which is posted in public places or served upon each voter, and must be given at least ten days before the day fixed for the meeting. The object of the meeting must be clearly stated in the notice, so that the voter has ample opportunity of coming to a decision upon what is to be submitted to and passed upon by the meeting; and as no business not mentioned in the notice can be discussed, job-

cepted. The advantages of such a delegation of powers were soon recognized by the General Court of the State, and it was generally adopted. This is the germ of the system of local government in New England which has from time to time been modified to suit the public needs and convenience. "The towns have been, on the one hand, separate governments, and, on the other, the separate constituents of a common government."

bery and hasty action are prevented. At the meeting the selectmen and the school committee report upon what has been done in the previous year, and what is necessary or desirable in the coming year. Every voter in the meeting has an equal right to approve or reject the propositions submitted to him, and to state his reasons for such action. The powers of the town meeting are very wide and include the regulation of many important, although only local, affairs. The act creating and recognizing them clearly explains their object: "as particular towns have many things which concern only themselves, and the ordering of their own affairs, and disposing of business in their own towns," it was ordered that "the freemen of every town, or the major part of them, shall have power to dispose of their own lands and woods, with all the privileges and appurtenances of said towns, to grant lots, and to make such orders as may concern the well-ordering of their own towns not repugnant to the laws and orders established by the General Court." The town meeting may enact by-laws and ordinances for the regulation of town affairs; elect all town officers; appropriate moneys for the support of the schools, for the maintenance and employment of the poor; for laying out and repairing highways, and for all other necesary town charges. It is in its nature a legislative and deliberative assembly; and although the township system has been adopted in some of the Western

States, the town meeting has lost its legislative character, and become only the machinery for electing town officers. It is thus deprived of one of its most distinctive characteristics. "A town meeting is a surer exponent of the will of the people than a legislative assembly, whether state or national. The nearer you come to the fountain of power, the people, the more clearly you perceive public sentiment, and learn the popular will." [1]

The county in the New England States came into existence sometime after the formation of the township, and is a judicial rather than a political division, being formed to define the jurisdiction of the courts of justice. In Rhode Island there are no county officers other than judicial; but in other New England States there are county officers of administrative powers. Thus in Massachusetts there are in each county three county commissioners, and one county treasurer, all of whom are elected and hold office for three years, one commissioner being chosen each year. To this Board is entrusted the management of the county buildings (such as the court house, jail, house of correction, etc.); and it has power to lay out new highways from town to town, to license inn-holders and common victuallers, to estimate the amount of taxes necessary to meet the county charges (which is, however, submitted to the State Legislature for approval), to apportion the county taxes

[1] On town meetings as schools of government consult "Tocqueville's Democracy in America," also "Mills' Representative Government."

among the cities and towns of the county, to negotiate temporary loans, and to perform many other functions which are appropriate to the maintenance of county institutions.

This system, in which the town forms the political unit, prevails only in the six New England States.

In the Southern States a very different system prevails, in which the county possesses the political power; and while the county is created by the State Legislature, yet its subordinate divisions are formed by its (the counties) own officers and possess no powers whatever, being merely a division for convenience at elections or to mark the jurisdiction of a justice of a peace and constable.[1] The town, then, so far from being, as in New England, the political unit, exists only as a geographical division, with little or no powers of local government. The history of the South is the cause of this. Thus, in the early history of Virginia the population was widely distributed, and the land held in large estates by a comparatively small number of owners. There was neither the occasion nor the necessity of that self-government which was so early constituted in New England, and little attention was paid to the management of such local matters as require regulation in a densely populated district. The town was un-

[1] These divisions are variously known as *precincts*, (Alabama, Florida, Texas, etc.); *townships* (Arkansas, California, etc.); *hundreds* (Delaware); *militia districts* (Georgia); *wards*, (Louisiana); *election districts* (Maryland); *supervisor's districts* (Mississippi); and *civil districts* (Tennessee). The *parish* of Louisiana corresponds to the *county* in other States.

known in Virginia, and the division into counties or districts was made for judicial purposes; for defining the jurisdiction of justice, and to facilitate the collection of the revenues of the State. The town meeting has, therefore, no existence, and the administration of affairs belongs to the county officers.

As early as 1621 Commissioners of the county courts were appointed in Virginia to hold monthly courts in the more remote regions of the State, and in process of time the management of the fiscal and other matters of county administration was entrusted to them. In some of the States which were formerly under the county system, further inroads into county organization were made, and some of the features of the township government adopted, but not to such an extent as to make the name of county system inapplicable. And as Virginia is among those States, it will be better to take Alabama as a model of the county system, for very few such modifications have been made in the organization of local governments in that State. The officers of the county are the Board of County Commissioners (called also the Court of County Commissioners), Assessor, Treasurer, Collector, Superintendent of Education, Apportioners of Roads, and Overseer of Roads. These officers are charged with the control of the county property, the assessment and collection of State and county taxes, the division of the county into election or other districts, the laying out and re-

pairing of roads, the construction of bridges, the care of the poor, the police of the county, etc., etc. The general control of these matters belong to the Board of County Commissioners, but the different functions are divided among the county officers, as their names clearly show. In some States the duties of the assessor are performed by the sheriff, by an assessor of one of the minor divisions of the county (of the hundred, precinct, or civil district), or a tax collector; and in others—Arkansas, Oregon, and Texas—the taxes are even collected by the sheriff. The members of the Board of County Commissioners are elected by the county at large, except in Florida, where they are appointed by the Governor, as are all other principal officers of the county; the Assessor, Collector, and Superintendent of Education are also elected by the county. The Board of Commissioners appoint the Treasurer, although he is in some States appointed by the Governor, or even elected by the people; three apportioners of roads, and an overseer of roads for each road district.

Under such a system it will be seen that the greatest advantage to be derived from the township system of New England, the political education of the citizen, is wholly wanting. The citizen casts his vote on the day of election, but there his political duties begin and end, for the settlement of all questions of administration is left to the county officials.

The county system, in various forms, exists in seventeen States; viz.: Alabama, Arkansas, California, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Nevada, Oregon, South Carolina, Tennessee, and Texas.

In the third system of local government, known as the "compromise system," the county possesses wider powers than is given it in the town system, and the town becomes a more important political factor than it is in the county system. The counties are created by the State Legislature, and exercise whatever powers are granted to them by statute. The townships are formed by the county officers (in New Jersey by the State Legislature, an example that has been copied by no other State), and they may elect their own officers, and regulate their own local affairs, subject, however, to the control of the county. The township, then, although it has it own town-meeting to vote taxes and pass upon local affairs, does not possess the independence of the New England township, but is subject to regulation by the county, an arrangement that is unknown in the purely town system. "The county thus becomes a more important factor in the administration of local affairs than in New England. Its executive officers are required to discharge all duties properly connected with the county administration, and, in addition, to audit the accounts of township officers

and accounts and claims against the township, and direct the raising of funds for their payment, to approve of votes of the township for borrowing money or incurring any extraordinary expenditure, and to levy on the property of the township such taxes for township purposes as may be duly certified to them by the township officers."[1]

The control of county and township affairs is exercised by a Board of Supervisors. In New York and some other States each town of the county elects one supervisor, and are thus represented as equal political communities. But in Pennsylvania and other States which have adopted her system, the affairs of the county are under the control of a board of three commissioners elected from the county at large. And this important distinction exists, in that while the supervisor in New York is both a county and a town officer, in Pennsylvania a county commissioner has no township duties whatever. The other county officers are a treasurer, a clerk, a school commissioner, and in a few States, (Indiana, Iowa, Minnesota, and Ohio) an auditor. Their duties are sufficiently apparent from their respective titles.

The town is under the control of the Board of Supervisors, yet it has some important powers which are within certain limits independent powers. Thus, it may lay out roads within its own limits, but should the Town Commissioners of Highways refuse to do

[1] "Statistical Atlas to Ninth Census." We have used freely the facts collected by Mr. Galpin in this work.

this, the county Board intervenes and appoints special commissioners for the purpose. The town determines the amount of town taxes to be levied for town purposes, and manages its schools and other local affairs. But in all questions relating to the assessment and collection of taxes, the borrowing of money, etc., the approval of the Board of Supervisors is requisite. Thus, all votes of the town for borrowing money must be submitted to it; it must audit all town accounts, levy all taxes, and equalize the assessments of the several towns in the county. And so far does this power extend that the Board may, by a two thirds vote, erect a new town or alter the boundaries of an existing town—a power which in the town system belongs exclusively to the Legislature. The principal officers of the town are elected, and comprise a supervisor, town clerk, three assessors, a collector, and a commissioner of highways; but if the town so elect, it may have three commissioners of highways.

The compromise system is used in the following States, although it presents many modifications in some of its features; Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

Municipal Corporations.

The forms of local government which have just

been briefly described apply, however, more especially to rural districts where the population is small and scattered, and the matters to be regulated few in number.

"There, every man who would be put forward for election as a 'selectman' or 'supervisor,' or on the various schools or other boards, is known through the township; the duties are discharged for a small salary or gratuitously; the spirit of the place demands economy in all outlays; there are generally no large funds to be kept or embezzled; it is a matter of prime interest that taxes shall be brought down to as low a point as possible; the police, the school arrangements, provision for the poor, for roads and bridges, are on a settled system; so that the town goes on from year to year with little change."[1]

In a densely populated district, the need for combined action on the part of the inhabitants is much more imperative, and the interest thus created so different from those of a rural district, that other and more extensive administrative systems become necessary, and to this fact municipal corporations owe their existence. "It is not the name of the corporate form which gives a city its character as such; but the fact that its inhabitants live closely together—in other words that the population is urban as distinguished from rural. Whenever the pursuits

[1] Woolsey, "Political Science," vol. ii, p. 383.

of agriculture are displaced by those of manufactures, trade or commerce, dense populations spring up, which require local governments radically different from those of the sparsely settled rural districts. The distinctions between such populations are obvious; but the consequences of such distinctions are, in general, not sufficiently apprehended. Wherever a few thousand people come, from whatever cause, to dwell in close proximity to each other, the necessity arises for a local government framed to suit the needs of a compact population. The country highways do not suffice; streets are needed; cleanliness, comfort and health are to be attended to, the streets must be regulated, paved, and cleaned; gutters, sidewalks, and sewers must be constructed. A conflagration would bring a common peril; and common provision must be made for the prevention of fires. Dense populations stimulate vice, immorality, and consequent turbulence and crime, and provision must be made for a suitable police. All these interests are peculiar to such a population, and the necessary expense must be defrayed by contributions levied exclusively within the area inhabited by it. Wherever such a population exists, though it may be very small, a government in the nature of a city government is required." [1]

A municipal corporation is "established by law,

[1] "Report of the Commission to Devise a Plan for the Government of Cities in the State of New York, 1877," p. 23.

to share in the civil government of the county, but chiefly to regulate and administer the local or internal affairs of the city, town, or district which is incorporated"; and it has been been very appropriately described to be "an investing the people of a place with the local government thereof." These corporations are created by and derive all their powers from the State Legislature, and in articles of incorporation, or *charter*, these powers are described and defined, and the form of government laid down. In granting such a charter the Legislature may, but need not, obtain the consent of the people of the locality to be affected, and, when granted, these instruments are subject to the control of the Legislature. "Public or municipal corporations are established for the local government of towns or particular districts. The special powers conferred upon them are not vested rights as against the States; but, being wholly political, exist only during the will of the general Legislature; otherwise there would be numberless petty governments existing within the State and forming part of it, but independent of the control of the sovereign power. Such powers may at any time be repealed or abrogated by the Legislature, either by a general law operating upon the whole State or by a special act altering the powers of the corporation."[1]

Such municipal corporations may be created un-

[1] Quoted in Dillon's "Municipal Corporations," vol. i, p. 139, where many other like decisions of the courts are cited.

der general laws which apply equally to all, or may each require a special act of incorporation from the Legislature. In Ohio, under a general law, all such corporations are organized into *cities* or *incorporated villages*. An incorporated village is governed by one mayor, one recorder, and five trustees elected annually; and these officers together constitute the village council. The powers of a city government are vested in a mayor, a board of trustees composed of two members from each ward (the political divisions of the city), and such other officers as may be created by the act of incorporation, and which will vary with the size, situation, and general wants of the locality to be governed. The mayor and trustees constitute the city council. In the New England States, however, there exist no general laws for creating municipal corporations, and this is done by granting to the towns special charters by which their powers are widened and the management of municipal affairs is transferred from the town meeting and selectmen to the mayor and council. And it is a curious fact that no city was incorporated in Massachusetts until 1821, the town government existing until that time even in Boston. The cause of a change from a town to a city government at that time is thus given by Mr. Quincy in his Municipal History of Boston, and it is quoted here because it clearly shows how inapplicable the town system is for the government of crowded districts: "In 1821, the

impracticability of conducting the municipal interests of the place, under the form of town government, became apparent to the inhabitants. With a population upward of forty thousand, and with seven thousand qualified voters, it was evidently impossible calmly to deliberate and act. When a town meeting was held on any exciting subject, in Faneuil Hall, those only who obtained places near the moderator could even hear the discussion. A few busy or interested individuals easily obtained the management of the most important affairs, in an assembly in which the greater number could have neither voice nor hearing. When the subject was not generally exciting, town meetings were usually composed of selectmen, the town officers, and thirty or forty inhabitants. Those who thus came were, for the most part, drawn to it from some official duty or private interest, which when performed or obtained, they generally troubled themselves but little, or not at all about the other business of the meeting. In assemblies thus composed, by-laws were passed, taxes to the amount of one hundred or one hundred and fifty thousand dollars, voted, on statements often general in their nature, and on reports, as it respects the majority of voters present, taken upon trust, and which no one had carefully considered except, perhaps, the chairman. In the constitution of the town government, there had resulted in the course of time, from exigency or necessity, a complexity little

adapted to produce harmony in action, and an irresponsibility irreconcilable with a wise and efficient conduct of its affairs. On the agents of the town there was no direct check or control; no pledge for fidelity but their own honor and sense of character." (p. 28.) In 1822 the city of Boston was established and a charter issued to it.

In Massachusetts, when a town has a population of twelve thousand, a charter may, at the request of its inhabitants, be granted to it, and it then assumes the government of a city, electing a mayor, a board of aldermen, and a common council, together with whatever other officers are provided for by the charter. In Vermont, villages containing more than thirty houses may be incorporated by the selectmen of the town, but the officers are not such as are required by a city, but are a clerk, five trustees, a collector and a treasurer; and its powers extend over such matters as relate to sidewalks, nuisances, estrays, police, etc. Another local division in this State is the "fire district," which is formed by the selectmen and possesses certain powers of self-government. Its officers are a clerk, a prudential committee of three, a collector and a treasurer. In Connecticut, cities are formed by special charters; and in the remaining New England States no regular form of incorporation is adopted, but under certain circumstances the local divisions possess the right to manage their own affairs, and particu-

larly as regards the assessment and collection of taxes.

In Alabama municipal corporations obtain their powers under a general law, the charter being issued by a Judge of Probate; although the more general method is to obtain a special charter from the Legislature. The government of these corporations consists of an Intendant, and from five to nine councillors, elected annually. Their powers extend over the police, and, within defined limits, taxation.

Let us examine more closely the organization and functions of a city government. And first as to its functions:

These must be regarded as ranging themselves into two classes, between which there exists an important distinction, and one that is frequently overlooked. Primarily, Judge Cooley says, the duties of municipal corporations are public, and their powers governmental. "They are created for convenience, expediency, and economy in government, and, in their public capacity, are and must be at all times subject to the control of the State which has imparted to them life, and may at any time deprive them of it. But they have or may have another side, in respect to which the control is in reason, at least, not so extensive. They may be endowed with peculiar powers and capacities for the benefit and convenience of their own citizens, and in the exercise of which they seem not to differ in any substantial de-

gree from the private corporations which the State charters. They have thus their public or political character, in which they exercise a part of the sovereign power of the State for governmental purposes, and they have their private character in which, for the benefit or convenience of their own citizens, they exercise powers not of a governmental nature, and in which the State at large has only an incidental concern, as it may have with the action of private corporations. It may not be possible to draw the exact line between the two, but provisions for local conveniences for the citizens, like water, light, public grounds for recreation, and the like, are manifestly matters which are not provided for by municipal corporations in their political or governmental capacity, but in that *quasi* private capacity in which they act for the benefit of their corporators exclusively. In their public political capacity they have no discretion but to act as the State which creates them shall, within constitutional limits, command, and the good government of the State requires that the power should at all times be ample to compel obedience, and that it should be capable of being promptly and efficiently exercised. In the capacity in which they act for the benefit of their corporators merely, there would seem to be no sufficient reason for a power in the State to make them move and act at its will, any more than in the case of any private corporation. With ample authority in the State to

mould, measure, and limit their powers at discretion, and to prevent any abuse thereof, their action within the prescribed limits, in matters of importance to themselves only, it would naturally be supposed should be left to the judgment of their citizens and of their chosen officers."

Moreover, when the functions of a city government are thus divided into what may be called functions of a *political* or *public* and of a *private* character, it will be seen that the number of the latter exceeds that of the former. Thus the administration of justice, the preservation of the peace, and the like are matters of public concern. But to provide for systems of drainage, ventilation, cleanliness, and locomotion; to carry out police regulations regarding nuisances, the preservation of health, the prevention of fires, the storing and use of dangerous articles, the establishment and control of markets, wharves, etc.; to create parks, lay out, open, or pave streets, and to control amusements; and to secure the safety of buildings, these clearly affect only the locality, and are more matters of business than statesmanship. The chief functions of a city government are merely executive and ministerial, and in which politics have little or no place.[1]

[1] "In the most completely developed municipality these powers [entrusted by the State to local governments], embrace the care of police, health, schools, street-cleaning, prevention of fires, supplying water and gas, and similar matters, most conveniently attended to in partnership by persons living together in a dense community, and the expenditure and taxation

The mayor or chief executive officer of the city, and the comptroller, who has charge of the finances of the city, hold their office by election, as it was thought that if the mayor could appoint the comptroller, he would possess too large powers. The traditions of State and National Governments are continued in an elective common council, which is generally, but not always, composed of two bodies. In this State (New York), under the Montgomery charter (1730), the Mayor was appointed by the Governor of the Province, and held office for one year. When the Constitution of 1777 was framed, his appointment was transferred from the governor, and vested in a State council of appointment, which was composed of the Governor together with one Senator from each great district of the State. By the amended charter of 1821, the mayors of all the cities in the State were appointed annually by the common councils of their respective cities, and it was not until 1833 that the mayor was chosen by the electors of the city; and even then this power was confined to New York City, the constitutional provision of 1821 still applying to all other cities of the

necessary for those objects. The rights of persons, property, and the judicial systems instituted for their preservation—general legislation—government in its proper sense; these are vast domains which the functions of municipal corporations and municipal officers do not touch." Governor Tilden's Message, 1875.

But few city governments, however, undertake to supply the city with gas, that privilege being generally granted to a private corporation.

State. The aldermen have been elected since the adoption of the Montgomery charter.

The mayor of a city is an administrative officer, to see that municipal ordinances are executed, and to preside at corporate meetings. In some instances he is even expressly declared to be a member of the city council, and presides over its meetings. But in New York, the mayor is not a member of the common council, although up to the year 1857, he was *ex-officio* a member of the Board of Supervisors. The mayor may be impeached.[1]

But as the executive duties of the mayor are beyond the power of one man to perform, they are divided and distributed among other executive officers, boards, or commissions. Thus, according to the charter of 1870 these various co-ordinate city departments were:—a finance department, law department, police department, department of public works, department of public charities and corrections, fire department, health department, department of public parks, department of buildings, and department of docks; to which was subsequently added a board of street opening. The heads of these departments, except of the departments of finance and law, were appointed by the mayor, as they properly should be.

[1] In the [N. Y.] Constitutional Convention of 1867–68, a report on the government of cities was made, in which it was proposed that the board of aldermen and comptroller should be elected by tax-paying voters, possessing property to the value of at least one thousand dollars; and that the mayor and councilmen should be elected by the whole body of electors. This would result in a mixed government, representing different constituencies.

In all cities there are not the same necessities for regulation and supervision, due either to their geographical situation or economic condition. Some may require a less number of departments, others a greater; but such an enumeration strikingly shows to what vast proportion city government has attained, and how complex a problem it is to secure the proper checks and balances in such a system.

It would be needless to recite the various duties of these departments, for their titles will give a general idea of their functions; and as they perform their duties under the direct control of the common council, and the indirect control of the State Legislature, these powers differ among the different States. They are, however, the machinery for carrying into effect the laws of State and the municipal ordinances and regulations.

Exactly what extent of power the common council possesses depends upon the charter granted to the city. The object is to secure local government, and therefore such powers must be limited to the regulation of local concerns. If it is found necessary, they can be extended or limited by the State Legislature as it sees fit. It will be instructive to enumerate what powers were granted to the Common Council of the City of New York by the charter of 1870, because a general idea of the extent of regulation required will be thus obtained, and it will also serve to place in a clear light what has already

been touched upon, namely, that the larger number of the functions of a city government are of a ministerial and administrative character:

"To regulate traffic and sales in the streets, highways, roads, and public places; to regulate the use of streets, highways, roads, and public places by foot passengers, vehicles, railways, and locomotives; to regulate the use of sidewalks, building-fronts, and house-fronts within the stoop lines; to prevent and remove encroachments upon and obstructions to the streets, highways, roads, and public places; to regulate the opening of street surfaces, the laying of gas or water mains, the building and repairing of sewers, and erecting gas-lights; to regulate the numbering of the houses and lots in the streets and avenues, and the naming of the streets, avenues, and public places; to regulate and prevent the throwing or depositing of ashes, offal, dirt, or garbage in the streets; to regulate the cleaning of the streets, sidewalks, and gutters, and removing, ice, hail, and snow from them; to regulate the use of the streets and sidewalks for signs, sign-posts, awnings, awning-posts, and horse-troughs; to provide for and regulate street pavements, cross-walks, curb-stones, gutter-stones, and sidewalks; to regulate public cries, advertising noises, and ringing bells in the streets; in regard to the relation between all the officers and employés of the corporation, in respect to each other, the corporation and the people; in relation to street beg-

gars, vagrants, and mendicants; in relation to the use of guns, pistols, fire-arms, fire-crackers, fire-works, and detonating works of all descriptions within the city; in relation to intoxication, fighting, and quarrelling in the streets; in relation to places of amusement; in relation to exhibiting or carrying banners, placards, or flags in or across the streets or from houses; in relation to the exhibition of advertisements or hand-bills along the streets; in relation to the construction, repairs, and use of vaults, cisterns, areas, hydrants, pumps, and sewers; in relation to partition fences and walls; in relation to the construction, repair, care, and use of markets; in relation to the licensing and business of public cartmen, truckmen, hackmen, cabmen, expressmen, boatmen, pawnbrokers, junk dealers, hawkers, peddlars, and venders; in relation to the inspection, weighing, and measuring of fire-wood, coal, hay and straw, and the cartage of the same; in relation to the mode and manner of suing for, collecting, and disposing of the penalties provided for a violation of all ordinances; and for carrying into effect and enforcing any of the powers, privileges, and rights at any time granted and bestowed upon or possessed by the said corporation."

It will at once be seen that these are all matters of local concern and should be under local control only. To believe that the State government could properly assume to regulate such affairs, would show

an ignorance of the proper functions of the two classes of governments, State and local. And yet New York City, in many important particulars, does not enjoy local self-government. On one pretext or another the State Legislature has assumed powers which it cannot perform efficiently, or as efficiently as a properly constituted city government would. And this interference on the part of the Legisture has become a crying evil, and is an outcome of special Legislation. Thus in New York City the powers and duties of the city officials are varied at will by the State Legislature, and their salaries fixed and altered at pleasure. If an additional free bath is needed, or a new street is to be opened, permission must first be secured from the State Legisture. The city cannot borrow a dollar, levy a local tax,[1] or loan its credit for a public work, if every citizen desired it, except by permission of the Legislature ; and yet the Legislature has the power to impose any debt, to direct the erection of any public work, and to compel the city to issue its bonds to pay for it, although every man in the city were against it.

There are thus two evils to be guarded against in organizing city governments. That some control over it by the State Legislature is necessary, can not be denied ; but in this State at least, and especially with respect to New York City, the Legislature interferes too much in the regulation of what is

[1] All mention of taxation is here omitted, as it will be fully treated in the second part, when the powers of government are considered.

purely of a local character. The remedy that is proposed for this condition of things, is to restrict the powers of the State Legislature, by preventing it from tinkering with city charters through special legislation. There is no reason why all the cities in the State should not be organized under a general law, such as is in force in many of the States; and if special privileges or regulations are required, let it be done at the instance of a majority of the inhabitants of the city,[1] who are the best judges of their own interests.

The form such a restriction would take is embodied in an amendment to the State Constitution, which has twice been proposed in this State, but has never reached the people. "It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting bills, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations, by the passage of general laws only, applicable alike to all incorporated cities; and the Legislature shall not pass any special or local bill affecting the local or municipal government of a city, nor any general bill providing for the organization of cities under local or municipal governments other than republican in form; nor

[1] By a majority of the inhabitants is here meant a majority of those who have a real interest in the government of the city, and who would naturally be those who owned property in the city.

shall the Legislature provide for the filling of any municipal office now existing or hereafter to be created, otherwise than by popular election or by appointment of the mayor with or without confirmation of the highest Legislative branch of the municipal government; except that clerks and subordinates of departments may be appointed by the heads of such departments. The people of every city shall have power to organize their own local and municipal government and to administer the same for local and municipal purposes, subject only to such general laws as the Legislature may enact, provided such local government shall be republican in form. No city shall increase its permanent debt or raise the rate of taxation above that prevailing at the time of the adoption of this amendment, or undertake new public works, or direct public funds into new channels of expenditure, or issue its bonds other than revenue bonds, until the act authorizing the same shall have been published for at least three months, and thereafter submitted to the people of the city at a general election, and have received a majority of all the votes cast for and against it at such election."

CHAPTER III.

THE ELECTORATE.

As all the public business is transacted by certain agents who act for the people, the latter are directly engaged in the appointment of these agents or officers. In some cases, also, the people are called upon to take a direct part in legislation, as, for instance, in the case of an amendment to the State constitution, when the question of its acceptance or rejection must be submitted to and passed upon by the people. The right of expressing their wish in such cases is known as the right of suffrage, and in its exercise each individual acts for himself; and it is the largest aggregate of individual opinions tending in one way that forms a majority of the people, and, under the present system in this country, decides the question. It should be remembered that all the forms and processes by which the exercise of the suffrage is surrounded, are to secure an honest and unbiased opinion from each one who casts a vote, without the mediation of any representative. Acting, then, for himself, each voter is responsible for the use he makes of this right of suffrage, the

most important duty of a citizen. By this means not only does he appoint the agents to carry out State action, but he may also call to account those who do not properly perform the public duties which are imposed on them by virtue of their office. If the representative has not proved true to his trust, or if the elected officer of the State has abused the powers entrusted to him, it is by electing a new representative or officer that the people may express their disapprobation. If it is sought to insert into the State constitution a provision that is hostile to the general good, the people, by their vote, may prevent such an abuse of legislative power. The efficiency and excellence of the government depend upon the character of the officials who are delegated to exercise its functions, and in the appointment of these officers the citizen exercises the highest privilege that belongs to him, and one that distinguishes him from a mere subject by permitting him to take part in the government. Much, then, depends upon the proper organization and the intelligent exercise of this right of suffrage.

Qualifications of Electors.

The right of suffrage is defined and controlled by the State itself, and the only limitation on the action of the States by the Federal government is contained in the XVth Amendment to the Constitution, that "the right of citizens of the United States

to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Each State may, subject to this limitation, determine the qualifications of its voters, for the Constitution of the United States has not conferred the right of suffrage upon any one, and the United States has no voters of its own. In the case of Representatives and Presidential electors, which are the only Federal officers chosen by popular vote, the qualifications of the electors are determined by the local or State law. The electors for Representatives in each State "shall have the qualifications required for electors of the most numerous branch of the State Legislature"; and each State shall appoint Presidential electors "in such manner as the Legislature thereof may direct."

Where the qualifications of electors are defined by the State constitution, no additional qualifications can be required by the State Legislature; this, however, does not prevent the passage of such measures as are necessary to give effect to the constitutional provisions. But if the Constitution should require of the voter a certain age, or residence, and the Legislature should pass a law requiring a property qualification, it would exceed its powers and the law would be unconstitutional.

As the qualifications of electors are determined by each State for itself, there are no uniform or gen-

eral rules common to all. The following are, however, required by all the States :—citizenship, either by birth or naturalization ; residence for a given period in State or voting district ; and a certain age (21 years). The period of residence required varies greatly among the States, and such a qualification is demanded not only for the State, but for the county, township or district. Thus in Pennsylvania the elector must have resided in the State for one year, and in the election district where he offers to vote, at least two months immediately preceding the election. And it follows from this that the party must be a resident within the district where he votes ; that is, if a State officer is to be elected the voter must be a resident of the State ; and if a county, city, or township officer, he must reside within such county, city, or township. The object of this provision is to prevent fraudulent voting, as it compels a man to cast his vote where he is known, and it prevents the moving of large bodies of voters from one district to another just before an election in order to carry a doubtful district, as was the case before restrictions were laid on the practice.

There are other qualifications of a special nature required by some of the States, such as the payment of taxes (Pa.), ability to read (Conn. and Mass.), a proper registration, etc. Formerly the number of such requirements was large, and included such as a property qualification, militia ser-

vice, *white* color, etc., etc., but the tendency is to simplify the list, and reduce it to as small a number as will be consistent with the purity of elections.

Not only are qualifications defined, but certain classes of the community are for reasons of public policy, temporarily or permanently debarred from the right of suffrage. Universal suffrage does not, and never has existed. Thus infants, idiots, and lunatics are excluded because they are incapable of exercising the right of suffrage intelligently. But when an infant becomes of age, or a lunatic regains his full reason, the cause of the exclusion no longer exists, and they are then entitled to the full privileges of citizenship. Idiots and lunatics are expressly excluded from the right to vote by the constitutions of Delaware, Iowa, Kansas, Maryland, Minnesota, Nevada, New Jersey, Ohio, Oregon, Rhode Island, West Virginia, and Wisconsin. The exclusion of paupers rests upon a very different reason, for there is no lack of intelligence. A pauper is dependent upon the bounty of the State for his subsistence; and as he does nothing for the community, but is on the other hand a burden and a charge to it, he is very properly excluded from a share in the government. This has been called a harsh and cruel doctrine, and has but slowly been adopted among the States. Thus there was a time when the inmates of public almshouses were allowed to leave the institution on the day of election and cast their votes. And

in 1842–6 the almshouses formed an important factor in the politics of the State of New York, for the paupers were sent out to vote by the party in power, and were threatened with a loss of support unless they voted as directed, and the number was such as to turn the scale in the districts in which they voted. This abuse of power was too flagrant to be long endured, and it is now impossible. Paupers are excluded in New York, California, Louisiana, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, and West Virginia. Persons under guardianship are excluded in Kansas, Maine, Massachusetts, Minnesota and Wisconsin.

The exclusion of women from the right of suffrage is general, it being limited in nearly all the States to *male* citizens. And in so doing it has been decided that no violence has been done to the XIVth Amendment to the Federal Constitution, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." In New Jersey it would appear that women were at one time allowed to vote. The constitution of that State, framed in 1776, permitted all inhabitants of a certain age, residence, and property to vote. And in an act to regulate elections, passed in 1793, occurs a provision that "every voter shall openly, and in full view, deposit his or *her* ballot, which shall be a single written ticket containing the names of the persons for whom

he or *she* votes." This privilege was abolished in 1807, and it does not appear that any other State ever allowed it. Of the justice and expediency of this exclusion this is no place to speak.[1]

Having thus determined what qualifications are required of the voter, and what classes of the community are denied the right of voting, the manner of electing officers must be considered. This process is made up of two series of acts, the one series leading up to the nomination of the officer, by which he is proposed to the voters for the office to be filled, and the other series leading up to the election, or his acceptance or rejection by the voters. These two series of acts are distinguished in this particular, that while the nomination of officers is not regulated and controlled by legislation, being planned and performed by political parties as voluntary acts, without any sanction of law, the election, or second series, is a matter for government interference, and every step is clearly defined by law. Moreover, the series of acts which result in the nomination is performed as many different times as there are political parties in the field. Thus, if only the more important parties are considered, the Republican and the Democratic, each one must offer a nominee or candidate for the office to be filled, and, therefore each one must separately perform all the preliminaries neces-

[1] In the city of Boston women may vote for member of school committees, if they possess the requisite qualifications. In many cities they may serve on the local boards, such as those of charities, education, etc., etc.

sary to make such a nomination. An election, however, is but a single act, and merely decides among the candidates named by the various parties for the office; it is performed but once, and is subject to regulation by the government and not by political parties.

The Nominations.

All nominations are made by the qualified voters acting directly in caucus or primary meeting, or indirectly through delegates in conventions. It is taken for granted that the people are desirous of filling the offices of State with men who are capable of performing the duties that belong to those offices, faithfully and honestly. What are the means by which such persons may be agreed upon? In every political division of the country there are members of at least two different parties, having different ideas on government and the manner in which it should be conducted, and between which there is a contest for the possession of the government, a contest which is, however, carried on by legal methods, and is decided by the will of the majority of the voters in a district. Moreover, as each party has some organization by which its action may be guided, and a well-defined policy, in casting their votes for the candidates for office the voters are really determining the policy by which the affairs of government should be performed, because the candidate is sup-

posed to represent and embody, as it were, such a policy. It may occur, and in fact often does occur, that a party may present its candidates with no definite principles for support, and in such cases the contest degenerates into a mere scramble for office, and this evil is more common in local governments, where the leading questions are considered of minor importance, and enlist to a less degree the interest of the people than do the State and Federal questions.

The organization of parties extends to the smallest political division of the country.[1] When an office is to be filled, or when a political contest is about to be held a call is issued to the members of one political party in the election district to meet at a specified time and place for the purpose of nominating candidates or choosing delegates to conventions. This implies some organization, for the voters in the party must be known, although the mere statement of a person who attends such a meeting that he is a member of the party, is accepted. And the need of such organization becomes the greater in proportion to the populousness of a district. Thus in a rural

[1] "Party organizations and machinery consist of national, State, county, city, ward, and township committees, and committees for each congressional district for each political party and township, ward, and city meetings, county, State, district and national conventions for making nominations, discussing political questions, adopting resolutions, party creeds, and platforms, and appointing committees for the succeeding year or term. The committees call the meeting and conventions, provide for holding them, procure and disseminate documents, addresses, political tracts, and other information among the people; procure and distribute tickets at the polls, and do various other things to obtain votes and carry elections, some of which honest men will do, and some of which they will not do."—Seaman's "American System of Government."

population the voters know one another and in general know the political standing of each inhabitant of a district. But in a city the opportunity for fraud and deception is greatly increased because such knowledge is impossible ; and this has necessitated a more complete organization of party forces. Thus a city is divided into a large number of voting districts, and in each district exists an association of the party. A meeting of such an association is known as a "caucus" or primary meeting, and has become an indispensable adjunct to party government. In rural districts the caucus is nothing but the town meeting called together for political and not administrative purposes. Such a call is posted in some conspicuous position in the town, before the store or at the cross-roads, but the local newspapers have now become the most effective means of making known such a meeting.

In the cities the caucus is called together by regularly appointed committees, for otherwise any number of such meetings could be convened by irresponsible persons, each one claiming to be the "regular" caucus, and thus endless confusion would result. The members of the committees thus appointed hold from year to year, and as they are frequently reappointed, they come naturally into some special knowledge of the politics and politicians of their districts and are apt to obtain an undue political influence and control of the political mechanism.

When assembled, the meeting is conducted according to such rules as govern the proceedings of a Legislature; a presiding officer and a Secretary are chosen, and the objects of the meeting are stated. Those present at the meeting are on an equality, and under certain restrictions imposed by the rules, the object of which is to preserve order and protect the rights of the minority, and not to stifle debate, each one has the right to make a nomination, and to urge the merits of his nominee. If properly seconded, or supported, these nominations are acted upon, the vote upon each nomination being *viva voce*. As soon as the necessary business is completed the meeting adjourns without day, and it only remains for the Secretary to give to each delegate his credentials to the convention for which he was chosen, and the credentials are in the form of a letter stating the fact of his election.

Simple as is this procedure it forms the very basis of our political system. The citizen here exercises his highest prerogative, and determines what person shall represent him in the Legislature, and what officers shall as his representatives perform the wishes of the Legislature, or shall attend to such matters which are more properly performed by the government. It is here; moreover, that the individual citizen can exert the greatest pressure, and it is when scheming and unscrupulous demagogues have gained possession of and have controlled the primaries, that

the greatest instances of misgovernment have resulted. By open debate the general standing and merits of the candidates proposed can be thoroughly canvassed, and a fit and proper nomination result. But when this source of political action is corrupted, and in place of originating action it is used to favor the purposes of political "bosses," then the primary becomes merely a form for registering the edicts of party leaders, so that it has sometimes been said that a nomination in caucus is equivalent to an election.[1]

The action of the nominating convention differs but little from that of the primary, save in the fact that it is composed of members regularly elected in the various districts according to the forms laid down for regulating such elections. Instead of acting directly, as in the caucus, the people act indirectly through delegates. The convention, then, bears the same relation to the primary as the Legislature (State) does to the town meeting. A State convention is composed of delegates chosen in each of the minor political division of the States, and nominates State officers, and, at stated intervals, Presidential electors. The National convention is composed of delegates from each State, and meets to nominate the President and Vice-President of the United States. These conventions, State and Na-

[1] For the practical action of the caucus and the manner in which it is used in New York City see an article by Mr. F. W. Whitredge in vol. i of "Cyclopædia of Political Science."

tional, are governed by the rules which govern legislative assemblies, and they differ little from them save in the object for which they are assembled. These meetings and conventions are merely parts of party organization, and as such are under party management, and are not generally recognized or regulated by law.[1]

Nor does party action end with the nomination of the candidates. The various committees are actively engaged throughout the election in pushing their candidate and urging upon the people the issues he represents. Political documents are circulated, the party leaders "stump" for the party candidate, ballots and posters are prepared and printed, and means for bringing the sick or infirm to the polls or voting-places, are provided. Every means are adopted for favoring their candidate and discrediting his opponent. Nor are such proceedings confined to legitimate modes of action; but bribery, buying

[1] In some States the protection of the law has been extended to the primary meetings with a view of diminishing fraud and undue influence. Thus, a law of Ohio provides for the calling together of a caucus and the manner in which notice of such meeting is to be given; and a like law is in force in Missouri and California. In New York, as an experiment, the law regulates certain parts of the proceedings of the caucus in the city of Brooklyn. "The principles of public policy which forbid and make void all contracts tending to the corrupting of elections held under an authority of law, apply equally to what are called primary or nominating elections, or conventions, although these are mere voluntary proceedings of the voters of certain political parties. It is quite as much against public policy to permit contracts to be made for the purpose of corrupting a convention or primary election, as to permit the same thing to be done to corrupt voters at a regular election. The buying or selling of votes, or of influence, at a nominating convention or election is quite as abhorrent to the law as the same corrupt practices when employed to influence an election provided for by statute."—McCrary, "Law of Elections," § 192.

of votes, the free use of money and of liquor,[1] and other means too numerous to be mentioned, are freely employed, with a view of influencing the result of the election. All of these expedients, as well as others which pertain more directly to the machinery of elections, such as ballot-stuffing and fraudulent returns, are committed under party management, and the parties are alone responsible for such abuses of the elective franchise.

The Election.

The time, places, and manner of holding elections are regulated by provisions in the State Constitution, or by legislative enactment, and this is true not only in the case of state and local elections but also in that of national elective officers. But Congress has power to make or alter such regulations in the case of senators and representatives (save as to the places of electing senators who must of necessity be chosen at the seat of government in the state) when it deems such interference necessary to the public good. Thus, before the year 1866, each state elected its senators as it pleased; some by a separate vote in each house of the state legislature, and others by both houses meeting and voting in one body. But in that year a uniform rule was imposed by Congress on the states, by the act approved July 25. "The legislature of each state which shall be chosen next

[1] In some States, by law, all liquor stores must be closed on election day.

preceding the expiration of the time for which any senator was elected to represent said state in Congress shall, on the second Tuesday after the meeting and organization thereof proceed to elect a senator in Congress. Such election shall be conducted in the following manner: Each house shall openly, by a *viva-voce* vote of each member present name one person for senator in Congress from such state, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each house, shall be entered on the journal of that house by the clerk or secretary thereof; or if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to be taken as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person has received a majority of the votes in each house, he shall be declared duly elected senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose by a *viva-voce* vote of each member present, a person for senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting,

shall be declared duly elected. If no person receives such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature, and shall take at least one vote, until a senator is elected."

In the election of Representatives, also, Congress has interfered and availed itself of the power granted to it. In many states before 1842, representatives to Congress were elected on a general ticket to be voted upon by the people of the state at large; but by an act of 1842, Congress prescribed that where a state was entitled to more than one representative, they should be elected by *districts* composed of contiguous territory, thus requiring the state to divide its territory into as many districts as it had representatives in Congress, each district being entitled to elect one such representative. By further acts which extend from 1848 to 1875, Congress has determined that the election shall be by ballot, and not *viva-voce* as was sometimes done; and that unless the state constitution fixes a time for the election, it shall be held in each state on the Tuesday after the first Monday in November. This is the extent to which Congress has legislated on the subject of the time, places, and manner of conducting elections, but these regulations apply only in the election of Federal legislative officers, and do not hold good in the election of state or local officers. But apart from

these regulations the same machinery of election is used in electing both state and federal officers.

The essential steps in an election are somewhat as follows: The Secretary of State issues to the sheriff, clerk, or county judge in each county a notice specifying the officers to be chosen at the next general election. The sheriff or other officer receiving the notice transmits a copy of it to the supervisor or one of the assessors in each town or ward of his county, and these officers, together with the town-clerk in the several towns, and the common council in cities, designate the places for holding the elections, such places being known as polls. The polls are open from sunrise to sunset, and are under the charge of inspectors in each district, who are chosen from both parties,[1] and whose duty it is to count the number of ballots cast and make a return of such ballots to the supervisors for each district. The board of supervisors or assessors makes up the return for the county by combining those received from the districts, and transmits the same to the county clerk who also files a list with the Secretary of State. A board of state officers, consisting of the Secretary of State, the comptroller, state engineer, attorney general and treasurer, examines the statements of the county clerks, and from the results of

[1] "The officers of election are chosen of necessity from among all classes of the people; they are numbered in every state by thousands; they are often men unaccustomed to the formalities of legal proceedings. Omissions and mistakes in the discharge of their ministerial duties are almost inevitable," Report on contested election case, Blair vs Barrett, 1870.

such examination declares what officers are elected. The Secretary of State then sends the proper notification to the persons chosen. In order to give greater publicity to the various steps just described, notices of them are from time to time published in the newspapers throughout the state.

Such a description, however, gives but a very imperfect idea of the immense amount of detail incident to an election, nearly all of which is subject to regulation by state laws. And with a view to giving in outline the essential points of such regulations, an election will be described more in detail; but it should be understood that such details are not uniformly demanded in all the states, and hardly two of them have an election system alike in every particular. Only the more important points are here given and illustrated, and these may be considered under the following heads: Registration, election or balloting, canvassing, and return of votes.

Registration.—In order to prevent the overcrowding of polling places, by which delay may occur, voters may be excluded from voting by lack of time, and fraud and intimidation ensue from the polls being filled with the men of one party who will endeavor to throw every obstacle in the way of the voters of the opposing party, a populous district, city or county, is divided into a number of voting precincts, each precinct containing a small number of voters as compared with the population of the district or

city. Thus the city of New York is divided into voting precincts which contain about two hundred and fifty voters each. Furthermore each voter in the precinct is required to register, that is, he must present himself in person on certain appointed days before officers chosen for the purpose, and enroll his name, and state such other facts as to his time of residence in the precinct, county and state, his naturalization if a foreign born citizen, etc., which may be required of him. Whoever neglects thus to be enrolled, cannot vote at the election, and any person applying to be registered may be challenged by a qualified voter, when the inspectors examine into the qualifications of the challenged voter and determine if he may be allowed to vote. When completed, the register is subject to revision, because there may be some voters enrolled who are under fictitious names, or who are non-residents, or who are personating absent or deceased persons, all of which has been frequently practiced.

It will be seen that the necessity for small voting districts and a complete registration apply to the populous districts rather than to those where the population is small and scattered. In the latter the inspectors of elections are competent to decide who are and who are not entitled to vote. But in a city the machinery of registration is needed, and its introduction has tended to diminish in a great degree a number of illicit practices, such as the transfer

of large bodies of voters from one district to another, ballot stuffing and repeating, or voting more than once. There is a new list made out on appointed days once a year to be used in general elections, but for other elections a revision of the general registration is found to be sufficient. In States where the payment of a poll or other tax, or a property qualification, is required of the voter, there is no need of a special registry, for these lists may be used for the same purpose.

Election or Balloting.

At general elections all voting is conducted by ballot.[1] "A ballot may be defined to be a piece of paper, or other suitable material, with the name written or printed upon it of the person voted for; and where the suffrages are given in this form, each of the electors in person deposits such a vote in the box or other receptacle provided for the purpose, and kept by the proper officers."[2] The intention of the ballot is to insure secrecy,[3] and thus to prevent

[1] In Kentucky alone is the old system of voting *viva voce* still maintained. Art. viii, § 15 of her constitution, reads:—"In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the votes shall be personally and publicly given *viva voce*: *Provided*, that dumb persons entitled to suffrage, may vote by ballot." In Congressional elections, however, this section is controlled by the Act of Congress requiring all votes for representatives in Congress to be printed or written ballots. In many of the States the Legislatures vote *viva voce*.

[2] Cushing's "Legislative Assembly," p. 103.

[3] It would appear that certain provisions which are found in the State Constitutions are framed against the secrecy of the ballot. Thus in that of Penn. occurs the provision that "every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the

those influences tending to overbear and intimidate the voter when it is known how he votes. And to secure this secrecy minute regulations by statute as to the form and quality of the ballot have been ordained. Thus in some States it has been thought sufficient to provide that all ballots shall be printed or written on plain white paper "without any mark or designation being placed thereon whereby the same may be known or designated,"[1] and under this provision ballots printed on colored paper have been rejected. Not only would there be a temptation to influence voters, if different ballots were allowed, but there would exist a stronger temptation to abuse the knowledge which such a difference

election officers on the list of voters, opposite the name of the elector who presents the ballot. * * * The election officers shall be sworn or affirmed not to disclose how any elector shall have voted unless required to do so as witnesses in a judicial proceeding." In Illinois the constitution provided that "all elections by the people shall be by ballot"; and a statute which required the inspectors to number each ballot as is required in the Constitution of Penn. as just described, was declared unconstitutional and void. But the better opinion is to preserve the secrecy of the ballot inviolate. Thus Judge Cooley in his work on "Constitutional Limitations" says: "The system of ballot voting rests upon the idea that every elector is to be entirely at liberty to vote for whom he pleases and with what party he pleases, and that no one is to have the right, or be in position, to question him for it, either then or at any subsequent time. The courts have held that a voter, even in case of a contested election, cannot be compelled to disclose for whom he voted; and for the same reason we think others who may accidentally, or by trick or artifice, have acquired knowledge on the subject, should not be allowed to testify to such knowledge, or to give any information in the courts upon the subject. Public policy requires that the veil of secrecy should be impenetrable; unless the voter himself voluntarily determines to lift it; his ballot is absolutely privileged; and to allow evidence of its contents, when he has not waived the privilege, is to encourage trickery and fraud, and would in effect establish this remarkable anomaly, that, while the law from notions of public policy establishes the secret ballot with a view to conceal the elector's action, it at the same time encourages a system of espionage, by means of which the veil of secrecy may be penetrated and the voter's action disclosed to the public" (p. 605).

[1] Oregon, § 30, p. 572 of code.

would give, when the canvass of votes was made. In Massachusetts no tickets are to be printed or distributed when there are three or more candidates to be voted for "unless such ballots are of plain white paper, in weight not less than that of ordinary printing paper, and are not more than five nor less than four and one-half inches in width ; and not more than twelve and one half, nor less than eleven and one half inches in length, and unless the same are printed with black ink on one side of the paper only, and contain no printing, engraving, device, or mark of any kind upon the back thereof. The names of the candidates shall be printed at right angles with the length of the ballot in capital letters not less than one eighth nor more than one fourth of an inch in height, and no name of any person appearing upon any ballot as a candidate for any office shall be repeated thereon with respect to the same office.'

Yet notwithstanding such regulations, there are errors in balloting which may be overlooked, when there is no indication of an attempt at fraud, although under a strict construction of the law they should be rejected. Thus errors of spelling, or the use of abbreviations, when they do not involve a doubt as to the intent of the voter, will be received ; nor will the omission of the word junior after a name make the ballot void. But the power of receiving such votes is open to grave abuses, and should be allowed

and exercised with great caution. In a recent decision by the Supreme Court of California it was laid down that "as to those things over which the voter has control, the law is mandatory, and that as to such things as are not under his control, it should be held to be directory only." And the court concluded "that a ballot cast by an elector in good faith, should not be rejected for failure to comply with the law in matters over which the elector had no control; such as the exact size of the ticket, the precise kind of paper, or the particular character of type or heading used. But if the elector wilfully neglects to comply with requirements over which he has control, such as seeing that the ballot when delivered to the election officers, is not so marked that it may be identified, the ballot should be rejected."[1] The intention of the voter is the guiding principle in such matters.

When more than one officer is to be elected, separate ballots may be used, and different receptacles or ballot-boxes for the ballots for the offices or set of officers may be required. Thus in elections held in the city and county of New York there are at general elections no less than seven of such boxes; marked respectively, President, General (for ballots cast for all officers in whose election all the voters of the city and county alike participate), Congress, Senator (State), Assembly, City (Aldermen) and

[1] Kirk *vs.* Rhoades, 46 Cal., 398.

Justices (of the district court). In case of special questions submitted to the people at a general election, such as a constitutional amendment, other boxes may be added. This is to facilitate the counting of the votes.

In New York city the elections are under the supervision of the Board of Police, which establishes a Bureau of Elections, appoints the chief of that Bureau, divides the city into voting precincts, and designates the places of registry and voting; it appoints all inspectors of elections, there being four in each election district (two of whom, on State issues, shall be of different political faith and opinions from their associates) and poll clerks, whose duties are of a clerical nature, such as making out registration lists, assisting in the canvass, etc., etc., of which there are two in each district, and they must be of different political faith on State issues. The inspectors of elections revise the registry list, preserve order at the polls, suppress riots, and protect voters and challengers [1]; and canvass or count the vote. And in every election district there are at least two inspectors, overseers or managers of election, who are chosen either directly by the people or by certain officers to whom the power is given. In New York city the inspectors are appointed by the Board of Police;

[1] Each political party has the right to be represented at each place of registration, revision of registration and voting, by a challenger who stands near the inspectors, and challenges voters whom he suspects of fraudulent voting, when the matter is examined by the inspectors, and the vote accepted or rejected.

but the constitution of Pennsylvania provides that in every district there shall be a board of elections consisting of a judge and two inspectors, chosen annually by the people; and as a further precaution, "the courts of common pleas of the several counties of the commonwealth shall have power within their respective jurisdictions, to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required, such appointments to be made for any district in a city or county upon petition of five citizens, setting forth that such appointment is a reasonable precaution to secure the purity and fairness of elections." These overseers must possess certain qualifications, and, there being two for each election district, must belong to different political parties. And a like protection is afforded by the United States election law, but the number of petitioners must, in that case, be ten.[1]

In no State are the purity of elections and the freedom of electors not guaranteed by statute, but these provisions are not uniform, although they all

[1] "Several of the States have recognized the importance of providing for the presence with the election officers of witnesses representing the parties to the contest. * * * For example, the law of Alabama provides for the presence of five of each party; that of Florida provides for the presence of one representative of each political party that has nominated candidates; that of Illinois, for the presence of two legal voters of each party to the contest; those of Kansas and Oregon permit the presence of the candidates in person, or of not exceeding three of their friends. Similar statutes are to be found in Pennsylvania and Virginia. The very important requirement that the board of election officers should be composed of members of different political parties is omitted from the statutes of twenty-two states."—McCrary, "On Elections," § 570–1.

aim at the same object. The elector is privileged from arrest during his attendance on elections, except for treason, felony or breach of the peace. He is protected from undue and corrupt influences. Thus in Pennsylvania, any person who shall give, or promise, or offer to give, to an elector, any money rewards or other valuable consideration, for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such elector's vote, and any elector who shall take or receive any reward or consideration for his vote, shall forfeit the right to vote at such election; and although such laws do not, and cannot wholly do away with corrupt practices at elections, they tend to diminish fraud.

The Canvass.—But all these precautions against fraud will not secure honest elections, unless further precautions are taken to protect the counting of the ballots cast; and at this stage of an election fraud may be, and continually is perpetrated, despite of all legal restraints. The counting or canvassing is performed by the inspectors of elections, who are of different political faith and opinions, and it is generally done immediately after the close of the election, and in the very room where the election was held. This is to prevent any tampering with the ballot-boxes, either by withdrawing some of the ballots cast, or by putting in such as could not have been voted under forms of law. In Mississippi, a

State that is notorious for its election frauds, if the canvass is not finished by midnight of the day of the election, it may be completed the next day ; and in South Carolina three days are allowed to the managers in which to deliver to the commissioners of election the poll-list, and the boxes containing the ballots ; and, as if to favor fraud and tampering with the boxes, it is provided that these commissioners of election shall meet *at the county seat*, nearly a week after the election, and proceed to count the votes of the county.

Where registration or a poll-list is employed, a canvass consists in comparing the number of ballots found in the box with the number of actual voters on the list, and in case there are found more ballots in the box than can be accounted for by the lists, such excess shall be drawn from the box and destroyed before an examination of the ballots is made. If the election is a local one, the inspectors merely count the number of votes and declare the result. But if it is a county or State election, they must make a written return of the number of votes cast in their district to higher canvassing boards, which in turn also prepare returns for the political divisions under their charge, to be forwarded to still other boards, as has already been described. The State Canvassing Board is the highest of these various boards, and declares the final result.

It is a well established rule that the duties of canvassing boards are purely ministerial, no judicial functions adhering to them. Their duty is one of arithmetic only, to count the number of votes and issue a certificate to the candidate receiving the highest number. They cannot reject what is, on its face, a correct return, and they cannot go behind the returns for any purpose; not even to correct the errors and mistakes of any officer that preceded them in the performance of any duty connected with the election. They have no discretion to hear and take proof of frauds, "even if morally certain that monstrous frauds have been perpetrated. The canvassing officers are to add up and certify by calculation the number of votes given for any office."[1] In some of the Southern States, such as Texas, Alabama, Louisiana, and Florida, the Legislature has expressly conferred by statute upon the board of canvassing officers the power to revise the returns of an election, to take proof and in their discretion to reject such votes as they deem illegal. But this is a power that is open to grave abuses, and has never been adopted by other states. "If canvassers refuse or neglect to perform their duty, they may be compelled by mandamus; though as these boards are created for a single purpose only, and are dissolved by an adjournment without day, it would seem that, after such adjournment, mandamus would be inap-

[1] Att'y Gen'l *vs.* Barstow. 4 Wiscon., 749.

plicable, inasmuch as there is no longer any board which can act; and the board themselves, having once performed and fully-completed their duty, have no power afterward to reconsider their determination and come to a different conclusion."[1]

In the event of a contested election, in which two or more persons claim to have been legally elected, and therefore entitled to an office, ample provision is made for a proper solution of the subject. Where the election is to a legislative office, the final decision rests with the legislative body; in other cases the proper courts must decide, "It matters not how high and important the office, an election to it is only made by the candidate receiving the requisite plurality of the legal votes cast; and if any one without having received such plurality, intrudes into an office whether with or without a certificate of election, the courts have jurisdiction to oust, as well as to punish him for such intrusion."[2]

A majority or plurality of votes, nowever small, decides the election, and it thus happens in a closely contested election that a portion of the community, the minority, however large, has no representative of its wishes, and is to that extent, without representation. Thus it may happen that in a district there are 500 Republicans and 550 Democrats; in this case, the Democrats, by a solid vote will be able to fill all the offices at their com-

[1] Cooley, "Consti. Limitations," p. 623.

[2] Cooley, "Consti. Limitations," p. 624.

mand with their candidates, and the Republicans, who are nearly equal in numbers, will be unrepresented in the Government. The glaring injustice of this manner of deciding elections has led to many schemes of minority representation, by which this minority may, under certain conditions, be enabled to elect some of its candidates in the face of an opposing majority.

Of the theory of minority representation we can say nothing. The division of the States into districts, and of the districts into minor subdivisions, does produce a form of minority representation, for nothing is more common than for an officer to be elected in a State or district which is, on a general vote, opposed to him in politics. It has well been said that the majority rule if carried out relentlessly in the election of representatives, would obliterate all election district lines, and lead to a general vote of the whole body of the people for the whole Legislative Assembly; which would then be composed of members belonging to one party. But this division into districts does not give any real relief to the minority from the disadvantages under which it labors, and other more complicated systems have been tried. Two of these forms have been adopted in certain elections in this country, viz.: the limited vote, and the cumulative vote.

Under the limited vote each elector is allowed to vote for a fixed number of persons less than the whole number to be elected. Thus in New York

County two members of the board of supervisors are elected each year. The law governing this election provides that no person shall vote for more than one candidate; the candidate receiving the highest number of votes was elected, and as the plan was formed to divide representation between the two parties, the next highest candidate was appointed a supervisor.[1] For many years the plan worked well, the Democrats electing a supervisor, and the Republicans being entitled to the appointment of another; but as the Democrats outnumbered the Republicans by more than two to one, the party leaders arranged it so that the Democrats in certain wards should vote for A, and those in others for B. Under this arrangement A and B were elected, and the Republican candidate was left out altogether. A like plan of electing aldermen in New York City has just been abolished, and a return to the old system of electing one alderman in each district made. In this case, six aldermen were elected at large, each voter however, being allowed to vote only for four; and three aldermen were elected in each aldermanic district, but a voter could only cast his ballot for two candidates. By an amendment to the New York constitution adopted in 1869 the limited vote was applied to the election of the judges of the court of appeals. The court was composed of a chief judge and six associate judges; but "at the first election of judges

[1] Passed April 15, 1857; and modified by act passed April 17, 1858.

under this constitution, every elector may vote for the chief and only four of the associate judges." The system is used in many localities in the selection of supervisors and inspectors of elections.

Under the second, or cumulative vote, a certain number of votes are given to each elector to be distributed as he pleases. Thus the constitution of the State of Illinois, which adopted the system in 1870, so far as regards the election of representatives, provides for the division of the State into districts, each district to be entitled to three representatives. "In all the elections of representatives aforesaid each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, as he shall see fit; and the candidates highest in votes shall be declared elected" (Art. iv, § 7 and 8). Under this system the voters are permitted to give all three of their votes to one candidate—one to each of three, or two to one candidate, and the third to another, as he wishes. In this system by concentrating their votes on one candidate a minority may be reasonably certain of electing him. It has been adopted in certain classes of municipal elections in Pennsylvania.[1]

[1] This and other systems of minority representation are discussed in Buckalew's "Proportional Representation." He strongly favors the cumulative system. What is regarded as the best system, that proposed by Mr. Thomas Hare, in which each vote counts for only one of several persons on the ballot, although more than one are to be chosen, has never been introduced into this country. It has been ably defended by Mr. Mill against adverse criticisms, but it requires a higher standard of intelligence and political morality than exists at present. See Mill's "Representative Government."

CHAPTER IV.

OFFICES AND OFFICE-HOLDERS.

The number of officials who are charged with carrying into effect the action of government, a number that is necessarily very large under a system of national, state and local governments, in which representatives of all are to be met with in the minor political divisions, renders the mode of selecting these officials a most important, and at the same time a most complex question. Office is a trust, and is to be held only for the performance of the duties that have been assigned to it; and when an official employs his position to further his own or his party's aims, he abuses his trust, and should be made accountable for such abuse. How are the men most fitted for the place to be obtained? How may the best service be secured from them? and finally, what is very important, in what manner may they be held strictly responsible for their conduct in office, for even the best of officials must be accountable in some way for their actions? That none of these questions have been answered in a satisfactory manner by the existing system of ap-

pointing to office is shown very plainly by the open abuse of official position and influence, and by the widespread corruption of the civil service; and they promise to become ere long one of the most prominent questions in national and state politics. It will be well then to glance briefly at the existing system and to suggest the most important remedies for the evils prevalent in that system.

The more important offices are provided for in the constitutions, both state and national. Thus in the Federal constitution the manner of electing the president and vice-president are expressly stated, and also the manner of appointing judges[1]; their terms of office are indicated, and their general powers and duties defined. In like manner a State constitution contains like provisions respecting the more important of the State officers. In such cases the powers of the Legislature are restricted by the constitutional provisions, and no change may be made by statute in any thing that is thus expressly laid down. But the Legislature may pass such laws as are necessary to carry into effect the constitution, and here its powers end. With regard, however, to the vast number of minor offices, the majority of which is found in the executive department of government, the power of the Legislature is supreme. It may create the office, grant such powers as it

[1] There is some doubt as to whether members of Congress are properly "officers" or not, the question never having come before the Supreme Court for decision. For this reason all mention of Legislators as officers is omitted.

chooses, prescribe the manner of filling it, limit the term of service, and fix the salary of the incumbent, and place him under such restrictions and control as it sees fit.

In order to render the question of office as free as possible from outside complications, the executive department of government will first be dealt with, as that from its very functions demands a large number of officials, reaching into the smallest political division of the country, moving in direct contact with the people, and at the same demands a high degree of accountability, for the trusts are important and easily abused.

For these reasons to appoint all executive officials except the chief executive officer, is better calculated to secure an efficient service, than to elect by popular vote. Take for example the Federal government. There is the head of the executive department, the president, who very properly holds his office by popular vote, for in no other way could there be so little opportunity for fraud and intrigue. And for a like reason the vice-president, who is the possible president, is chosen in the same manner. The president appoints the heads of the various executive departments, who act under his guidance; he appoints many of the department officers; he appoints all revenue collectors, both of customs and of internal revenue; all postmasters whose salaries are above $1,000 a year; all diplomatic and commercial

agents (consuls and consular agents), who are the instruments of executive action in foreign countries, and many others. The appointment of many inferior officers is vested in the heads of the departments or such other executive officers as may be designated by Congress. But, as the chief, the president is responsible not only for his own acts, but also for the acts of those who hold office through his appointment or that of officers directly responsible to him. In the vast system of Federal executive it may be said that the president is responsible, directly or indirectly, for every part of its action, and for every one of the agents of that action. For this reason it is very proper that he should appoint to office the men who are intended to carry into effect his will. That the advice and consent of the Senate are required changes but little the theory of such a system of appointments ; for, as has been said, the Senate does not pass upon nominations as a legislative, but as an advisory body,—as a council of appointment. It is intended to serve as a check upon the action of the president, who might be led to abuse the power of patronage if he were not so restricted. No executive agent, save the President, should be held politically responsible to Congress. Such a provision would beget endless contention.

That the principle in force in the executive department of the Federal government is the only true one cannot be doubted, although it has been often

abused for party or personal reasons. Public appointments should be made on the sole authority of those to whom directly or indirectly the holder of the office is subordinate. And in respect to responsibility the Federal executive furnishes a model that is worthy of all imitation.

"The actual conduct of foreign negotiation, the preparatory plans of finance, the application and disbursements of public moneys in conformity to the general appropriations of the Legislature, the arrangement of the army and navy, the direction of the operations of war, these, and other matters of like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate, and on this account they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence." [1]

But when we pass from the Federal to the State executive, a very different system is found. Under the impression that election by the people only is in accordance with true democratic principles, one after another the chief executive officers have become elective. The governor is elective, and stands in the same relation to the State government as the

[1] Federalist, p. 502.

President does to the Federal government. Yet he possesses little power of appointing his subordinates, although in theory he is responsible for their actions. The chief executive officers of the State, who perform the administrative functions in the State that the Cabinet does in the nation, hold their offices by a popular election, or at the hands of the same power that raised the governor to his office. So that instead of being subordinated to his guidance, and accountable to him for their actions, which are performed while carrying into effect the governor's functions, distributed for convenience among a number of officers, they are his equals and independent of his control.

Moreover not only are they made independent officers, but by the manner of choosing them, they may be made politically opposed to the governor, and thus this system tends to destroy that unity of purpose and action that should be one of the chief characteristics of the executive. Thus the governor may belong to one political party and may be pledged to support a certain line of public policy; the secretary of State, or treasurer, or all the executive officers may belong to another party and pledged to carry into effect a totally different policy. And yet they cannot be brought under the control of the governor, and there is no way by which he may secure harmony in the administration, for the State constitution prescribes the manner of choosing

these officers, and by that constitution they are to be elected by the people. It is an evil when the Legislature and executive are not in accord; but the evil becomes greatly magnified when dissension occurs in one of the administrative departments.

In such a system where does the responsibility rest? Certainly not with the governor, for he has no voice in the selection of these officers. In place of one authority, there is the authority of many, and instead of one responsible head, the responsibility is divided, and we must hold the "people" or the "party" to account for selecting inefficient or corrupt officers. There is no real responsibility in this system.

Take another example of an office being made elective when all theory is against it. The sheriff is as much an agent of the State as distinguished from local action, as is a Federal internal revenue collector an agent of national as distinguished from State action. In either case to secure a higher efficiency of government, their action is confined to a limited territory. "That officer [the sheriff] is," says one of our clearest political writers,[1] "the lieutenant of the governor in a county. He is properly a part of the State, and not of the local or municipal administration. He is custodian of the peace of the county. It is his duty, on order of the governor,

[1] Charles Nordhoff, in *North American Review*, October, 1871. This essay will repay a careful study, and we have freely used Mr. Nordhoff's arguments and illustrations in this chapter, often using his very words.

or without if the case is urgent, to suppress unlawful assemblages, to quell riots and affrays, and to arrest and commit to jail if need be those engaged in the disturbance of the public order." Yet the appointment of this officer has in a majority of the States been taken from the governor, and he is elected by popular vote in each county, being thus in form a county, but in functions a State, officer. It is true that this incongruity is in some States lessened by limiting the sheriff to one term of office, or by prohibiting him from holding office for two successive terms.[1] For, to illustrate, let it be supposed that the sheriff is called upon to enforce in his county a measure to which the inhabitants of the county are hostile. Will he act with as much vigor when he knows that his remaining in office depends upon his ability to retain the good will of the electors of his county, than if he held his office independently of them? Or could he refrain from using his official position and influence to secure a re-election? These are questions which are only in part answered by limiting the term of office. That the system of electing sheriffs, and like officers, such as coroners and district attorneys, does weaken executive responsibility, is unquestioned; although the responsibility of the governor is very often recognized (as in New York State) by giving him power to remove such officers.

[1] In New York State, sheriffs shall be ineligible for the next three years after the termination of their offices.

But if the organization of the local and municipal governments is examined, the elective principle will be found to be in most cases more predominant than in the State government. In the township governments this evil is not great, because the interests at stake are neither many nor important, and where the town-meeting exists, the officers may be held to a strict account for their conduct of affairs. In town-meeting all officers of the local government are elected. But with respect to a city, where the problems of government are complex, and where even under the best devised administration there appears to be opportunity for fraud, the needs are of a very different nature. As the functions of a city government are almost wholly of an administrative nature, the highest degree of accountability would appear necessary. Moreover, it would also seem as if unity in action was also desirable, and for this, one ruling head is requisite. For these reasons, we would expect to find a city government modelled after the Federal executive, which secures both of these requisites. And in some cities this is nearly the case. Thus in Baltimore, the mayor nominates, and by and with the advice and consent of a convention of the two branches of the city council appoints all officers under the corporation, except the register of the city and the clerks employed by the city. By a very recent provision in the city charter, the mayor of Brooklyn (N. Y.), has the power of appointing the

successor of any commissioner or other head of department (except the department of finance and the department of audit), or of any assessor or member of the board of education of said city, when the terms of such officers shall expire.

In organizing a city government it has generally been feared that the mayor may be invested with too extensive powers, and that by centralizing too many powers in his hands, the opportunity for abuse will be greatly increased, while the power of remedying abuse will be decreased. Through this fear the mayor has been deprived of many powers which would rightly belong to him, and especially is this the case with regard to the power of appointment. In the city of Boston, the mayor with one of the branches of the council, appoints some of the executive officers of the city ; others are elected by a concurrent vote of the two branches of the council; and some of the administrative boards, such as the overseers of the poor and school committees, are elected by the people. But the charter also provides that "that all boards and officers acting under the authority of said corporation [*i. e.* the city], and entrusted with the expenditure of public money, shall be accountable therefore to the city council." This does not, however, secure as high a degree of accountability as a system which makes all executive officers responsible to one person. In the city of New Orleans, the elective principle is applied to

nearly all the administrative offices of the city. The mayor, treasurer, comptroller, commissioner of public works, and commissioners of police and public buildings, are all elected by the people; and the surveyor of the city, and city attorney are elected by the council. And, notwithstanding this system, in which the mayor is to all appearances freed from any responsibility respecting the other administrative officers, the charter provides that it "is his duty to report to the council all officers and persons employed by the city, who fail to perform their duty, or commit any act for which they should be impeached or removed from office." But, unless it was also provided that he may suspend such officers, the mayor would be almost powerless to correct abuses in the city departments, save by the uncertain process of impeachment.

It is a common belief that to vest all appointments in the executive, with or without the consent of the Senate, tends to centralization; and that is undoubtedly the effect when the power is given absolutely to the executive. For, however open to abuses, the need of obtaining the consent of the Senate does act as a check on the appointing power, and this check is often well employed. But, by actual experience, it has been shown, that a system of election tends more strongly to centralize power, and at the same time to disturb that harmony that should exist in the administration of affairs. Thus in one of the con-

stitutions of South Carolina, all appointments were to be effected by ballot or by joint vote of the Legislature, without any co-operation of the governor. "It produced," says Dr. Lieber, "a stringent centralization without a sharply felt responsibility—a state of things by no means inviting imitation."[1]

That all executive officers should be held responsible for their conduct is a truism that scarcely requires to be mentioned. But how they may be made accountable is a difficult problem. It would appear that the appointing agent should also possess the power of removal. Yet even in the Federal government the power of removal is restricted by the tenure of office act, under which the president can only suspend an officer until a successor is appointed. All the chief executive officers in the State may be impeached,[2] but judgment in such cases does not extend further than to removal from office and disqualification to hold any office of trust or profit under the State. Nor does such judgment shield the impeached official from indictment and punishment according to law. But the process of impeachment is a tedious and uncertain method of holding officials to account, and it would be a better plan to give the power of removal or

[1] Reflections on the changes which may seem necessary in the present constitution of the State of New York, 1867.

[2] "Public officers shall not be impeached; but incompetency, corruption, malfeasance, or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law."—Constitution of Oregon.

even suspension to the chief executive. The constitution of Pennsylvania (1873) contains the following salutary provision: "All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office, or of any infamous crime. Appointed officers, other than judges of the courts of record and the superintendent of public instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except the governor, lieutenant governor, members of the general assembly, and judges of the courts of record learned in the law, shall be removed by the governor for reasonable cause, after due notice and full hearing, on the address of two thirds of the Senate"[1] (Art. vi, § 4).

Nor is the power of calling officials to account confined to the executive or legislature. By the charter of the City of St. Louis (1867), "every officer of the corporation, excepting the mayor and police justices * * * shall before entering upon the discharge of the duties of his office give a bond to

[1] In Alabama, the governor, secretary of state, auditor, treasurer, attorney-general, superintendent of education, and judges of the supreme court, may be removed from office for certain causes, by the Senate sitting as a court of impeachment. The sheriffs, clerks of the circuit, city, or criminal courts, tax-collectors, tax assessors, county treasurers, coroners, justices of the peace, notaries public, constables, and all other county officers, mayors, and intendents of incorporated cities and towns in the State, may be removed from office for certain causes, by the circuit, city, or criminal court of the county in which such officers hold their office. But in all cases trial by jury and the right of appeal are allowed.

the city * * * for the faithful discharge of his duty. * * * For any breach of the condition of said bond, suit may be instituted thereon by the city, or *by any person* claiming to have been injured * * * by such breach * * * for his own benefit" (§ 20).

There can be no question that one of the most prolific sources of official corruption and incompetency lies in the multiplication of elective offices, and herein consists one of the great distinctions between national and State offices. The democratic doctrine is that all officers should be chosen by the people, and as is often added, should hold office for short terms. But the people may fill offices indirectly by vesting the appointment in some elected officer, and no violence is done thereby to the democratic doctrine. In fact, when closely examined, the application of a system of elective offices, is of very limited scope, and especially with regard to executive or administrative offices. And yet the more do the purely administrative functions enter into the government, as in the State and municipal governments, as compared with the Federal government, the more general is the elective principle applied. Mr. Mill, in his work on "Representative Government," recognizes the true principle that should govern the filling of executive offices. "A most important principle of good government in a popular constitution is that no executive functionaries should be appointed by

popular elections, neither by the votes of the people themselves nor by those of their representatives The entire business of government is skilled employment[1]; the qualifications for the discharge of it are of that special and professional kind which cannot be properly judged of except by persons who have themselves some share of those qualifications, or some practical experience of them. * * * All subordinate public officers who are not appointed by some mode of public competition should be selected on the direct responsibility of the minister

[1] This sentence of Mr. Mill contains an important truth, which militates against the idea of limiting the terms of offices of this class of officials. There is in every department of government a large number of rules or customs which can be learned only by experience; and as it is in the inferior grades of officers that this experience is found to exist, they may thus render essential service to their superiors, who may be ignorant of the practical details of the department. These inferior officers are in a measure "skilled laborers," and if subject to frequent change would introduce confusion and inefficiency in the transaction of business. This idea has been very well expressed by Sir Geo. C. Lewis, when speaking of the English service. "The permanent officers of a department are the depositories of its official traditions. They are generally referred to by the political head of the office for information on questions of official practice, and knowledge of this sort acquired in one department would be useless in another. If, for example, the chief clerk of the Criminal Department of the Home Office were to be transferred to the Foreign Office, or to the Admiralty, the special experience which he has acquired at the Home Office, and which is in daily requisition for the guidance of the Home Secretary, would be utterly valueless to the Foreign Secretary, or to the First Lord of the Admiralty. * * * Where a general superintendence is required, and assistance can be obtained from subordinates, and where the chief qualifications are judgment, sagacity, and enlightened political opinions, such a change of offices is possible; but as you descend lower in the official scale the specialty of function increases. The duties must be performed in person, with little or no assistance, and there is consequently a necessity for special knowledge and experience. Hence the same person may be successively at the head of the Home Office, the Foreign Office, the Colonial Office, and the Admiralty; he may be successively President of the Board of Trade, and the Chancellor of the Exchequer; but to transfer an experienced clerk from one office to another would be like transferring a skillful naval officer to the army, or appointing a military engineer to command a ship of war."

under whom they serve. * * * The functionary who appoints should be the sole person empowered to remove any subordinate officer who is liable to removal, which the far greater number ought not to be, except for personal misconduct."

As illustrating the blind attempts that have been made to secure an honest and efficient government, it will be interesting to note some of experiments that were made in New York, for a great part of the resulting misgovernment was due to the loose responsibility caused by the manner of filling city offices. Measures were early taken to distribute the powers or government which had been abused while centralized in a few hands. The city was made subject to the control of two governments, that of the county and that of the city,[1] and the board of supervisors was entirely irresponsible to the mayor. Moreover it was provided that the board should be non-partisan, that is, composed in nearly equal numbers of men of both political parties, an arrangement which severed them from any party control. Many of the most important functions of the city government were entrusted to non-

[1] As the city and county of New York are the same in extent, for many years a double system of government existed, thus giving to the same territory and population two distinct legislative bodies, independent of one another, and constantly liable to clash in interest and action. As the common council is composed of two distinct boards, aldermen and councilmen (although there is little opportunity for securing that difference in constitution and organization, which recommends such a division in the national and State legislatures), the duties of the board of supervisors were conferred upon the board of aldermen, and thus one unnecessary deliberative body abolished.

partisan commissions or boards, appointed by the governor or Legislature, and thus perfectly independent of the control of the mayor. The actual situation was thus succinctly stated in the State constitutional convention of 1867. "The interference of the Legislature has, at length, reduced the city government to a condition of political chaos. The mayor has been deprived of all controlling power. The board of aldermen, seventeen in number, the board of twenty-four councilmen, the twelve supervisors, the twenty-one members of the board of education, are so many independent legislative bodies, elected by the people. The police are governed by four commissioners, appointed by the governor for eight years. The charitable and reformatory institutions are in charge of four commissioners whom the city comptroller appoints for five years. The commissioners of the Central Park, eight in number, are appointed by the governor for five years. Four commissioners, appointed by the governor for eight years, manage the fire department. There are also five commissioners of pilots, two appointed by the board of underwriters, and three by the chamber of commerce. The finances of the city are in charge of the comptroller, whom the people elect for four years. The street department has at its head one commissioner, who is appointed by the mayor for four years. Three commissioners, appointed by the mayor, manage the Croton aque-

duct department. The law officer of the city, called the corporation counsel, is elected by the people for three years Six commissioners appointed by the governor for six years, attend to the emigration from foreign countries. To these there has recently been added a board of health, appointed by the governor." This system erred in two ways : it took the appointing power from the mayor ; and it deprived the residents of the city of any voice in the management of local affairs, because all their officers were appointed at Albany.

The misgovernment that resulted from this piece of patch-work was even worse than that which had prevailed under the previous system, and as a further remedy, the charter of 1870, vested the appointment of the commissioners of the various departments in the mayor. But a great error was here committed, for the terms of office of these commissioners were made different from that of the mayor. Thus, four police commissioners were appointed for eight years ; five commissioners of charities and correction for five years ; one commissioner of public works for five years ; five fire commissioners for five years ; four commissioners of health for five years ; five commissioners of parks, for five years ; one of buildings, for five years, and five of docks to hold for five years. The comptroller and corporation counsel were elected and held office for five years. The result of this was that as the mayor's term of office

was but two years, he could be impeached and removed, but these officials retained their office unless they also could be impeached, which under the existing circumstances (the city being then in the power of the Tweed ring) was a very difficult if not impossible thing to do. While the people could elect a mayor, the other officials could not be removed by the new mayor by impeachment, and no real change in the city government could result.

Nor even at the present day, after many changes in the city charter, does there exist that complete control over executive functions which properly belongs to the mayor. In his last message (1882), the mayor said: "It is proper that these matters should receive the most careful consideration at both your hands and mine, notwithstanding the fact that while the mayor and common council are held responsible by the people for the state of our municipal affairs, we are virtually powerless under the present anomalous system, all administrative functions of real moment being exercised either directly by the heads of the executive departments, who are practically beyond control, or indirectly by the Legislature of the State, through special legislation."

To sum up then, we may quote Dr. Lieber's words: "The former almost universal mode of appointing by the Executive, with the consent of the Senate, seems to be far the best; certainly no better one has yet been discovered."

There is also a marked distinction between the national and State system of appointing judges. By the Constitution of the United States, the judges of the Federal courts are to be appointed by the president, with the advice and consent of the Senate; they are to hold their offices during good behavior; and are, at stated times, to receive for their services a compensation which shall not be diminished during their continuance in office (Art. 3, § 1).

The object of these provisions is to secure the independence of the judiciary. "In monarchical governments, the independence of the judiciary is essential to guard the rights of the subject from the injustice of the crown; but in republics it is equally salutary, in protecting the Constitution and laws from encroachments and the tyranny of faction. Laws, however wholesome or necessary, are frequently the object of temporary aversion, and sometimes of popular resistance. It is requisite that the court of justice should be able, at all times, to present a determined countenance against all licentious acts; and to deal impartially and truly, according to law, between suitors of every description, whether the cause, the question, or the party be popular or unpopular. To give them the courage and the firmness to do it, the judges ought to be confident of the security of their salaries and station."[1] Nor is this independence less necessary when the relations of the Leg-

[1] Kent's "Commentaries," vol. 1, p. 294.

islature to the judiciary are considered, for if the salaries of the judges could be altered and modified at pleasure by the Legislature, all check upon unconstitutional legislation which the judiciary now exercises would be done away with. It would appear then as if the Federal judiciary was based upon the best system that could be devised.

But the framers of State Constitutions thought otherwise, although it is only within a comparatively few years that the judges have been made elective in a number of States. Thus in 1830, in one half of the States judges were appointed by the governor; and in the other States they were elected by the Legislatures in joint assembly, or they were nominated by the governor and confirmed by the Legislature. In 1878, in twenty-four States, the the judiciaries were elected by popular vote, in nine they were appointed by the governor, and in five they were elected by joint assembly.[1]

It requires little comprehension to see that this method of electing judges destroys the independence

[1] "The short terms of office which characterize those States with a Legislative choice have been succeeded under popular elections by long terms. Under popular elections the term of the judges of the highest court in California and Missouri is ten years; in West Virginia, twelve years; in New York, fourteen years, and in Pennsylvania, twenty-one years, incumbents not being re-eligible in the last case. In fact, the average term of popularly elected judges is not much less than ten years, with such classification as to secure the State against change of its whole bench at once. The States intrusting judicial appointments to the governor, secure to the incumbent possession during good behavior, sometimes with a limit of superannuation. In those where the Legislatures elect, terms vary greatly; from two years in Vermont to twelve in Virginia. The Vermont practice has been to elect judges every session—even annually when the sessions were annual."—Warren in *International Review*, Sept., 1878.

of the judiciary, which should be one of its most marked characteristics. For it makes a seat on the bench a reward of adhesion to a political party and makes the retention of it dependent on subservience to the party. "Popular election proceeds on the principle that the people are the source of all power; which is true, in the last resort, and the persons elected are the agents of the people. But it is less true of judges by far that they are agents of the people than of any executive officer. There is nothing falling within the sphere of judicial action concerning which the judge can properly inquire what the people think or prefer. The same is in a degree true of the executive, but not to an equal extent of the legislative department. The existing law—from whatever source it comes—and the facts of the case the people have nothing to do with, as far as these bear on the trial; the law can be altered for future cases, the verdict can be set aside perhaps by executive pardon, but the judge knows only existing law with its principles and the irreversible facts. Now election by the people tends to make a man feel that he is the servant of the people who live at the present time, not of the law nor of the Constitution, which is the voice of the people for all time. How can this fail to injure his firmness and his righteousness, especially in cases where a political criminal has the people strongly for him or against him? Even moral lessons the judge may

not go aside from his strict duty to teach, how much less can he use his power as the people would have him, against the claims of justice? But he will be apt to do this if he depends on the people for his power." [1]

There is another class of office-holders of all grades and degrees in the various departments of the government, both State and national, who have no voice in the administration, but as chiefs of bureaus and clerks, are necessary for the transaction of business. In the Federal administration alone there are nearly ninety thousand such office-holders, and as new territory is opened up, the number is constantly increasing. That there should be any question on the manner of filling these places is a matter for wonder, for it would naturally be supposed that the only qualifications required would be fitness for the position, and administrative capacity. But instead of these, such appointments have been made on the basis of recommendations, influence, and official favor, a system that has introduced grave abuses in the civil service, as this department of the administration is called.

These evils are supposed to have been begun by the passage of an act in 1820 to limit the term of office of certain officers. "From and after the passing of this act, all district attorneys, collectors of the cus-

[1] Woolsey's "Political Science," vol. 2, p. 342. This subject of an elective judiciary is very fully and ably treated by Mr. Dorman B. Eaton, in his pamphlet "Should Judges be Elected?" (1873).

toms, naval officers and surveyors of the customs, navy agents, receivers of public moneys for lands, registers of the land offices, paymasters in the army, the apothecary-general, the assistant apothecary-general, and the commissary general of purchases, to be appointed under the laws of the United States, shall be appointed for the term of four years, but shall be removable from office at pleasure." This law practically placed these offices at the disposal of each new president or appointing officer, and the opportunity was soon used for rewarding personal friends or politicians for their political services without any regard to the fitness of the appointments. Thus, during the eight years of General Washington's administration there were only nine removals, and all for cause. Mr. Adams made nine removals also, but it is believed that none were because of a difference of political opinion. Mr. Jefferson removed only thirty-nine office-holders; Mr. Madison, during eight years, made five removals; Mr. Monroe, during eight years, made nine; and Mr. John Quincy Adams, during four years, made but two. On the accession of Mr. Jackson to the presidency in 1829, the whole system was changed, and the power of removal was freely employed. "Jackson, following a president who had almost created a hostile party, and being opposed by so many open and concealed enemies, decided to fill every vacancy with a partisan of the administration, and further, to create va-

cancies, whenever it should seem of party advantage, by exercising the almost unused privilege of removal from office. This made necessary, during the summer of 1829, the application of the comparatively novel theory of 'rotation in office,'[1] by which nearly 500 postmasters were removed during Jackson's first year of office. The practice, thus begun, has since been followed by all parties in all elections, great and small, national and local."[2]

A further abuse arose in the assumption of local patronage by senators and representatives. In the early days of the republic, when means of communication were slow and uncertain, the president very naturally consulted the State's representatives respecting candidates for Federal offices in their States, for in no other way could he secure this knowledge. In time, however, the representatives regarded the power of advising the president in these particulars as a right, and even more began to dictate appointments as if the Federal patronage in their State or district was their private property, to be used as seemed to them best. The result was that offices were used to build up political influence, and were bestowed for party services; so that he who could manage a primary election or gain political advantage possessed stronger recommendation for office than he who was by capacity better fitted for the performance of its duties.

[1] "To the victor belong the spoils," is the vulgar rendering of the phrase.

[2] Johnston's "History of American Politics," p. 105.

As early as 1838 a movement was made to separate office from politics. Mr. Calhoun described the proposed measure as a bill "to inflict the penalty of dismission on a large class of the officers of this government, who shall electioneer, or attempt to control or influence the election of public functionaries, either of the general or State governments, without distinguishing between their official and individual character as citizens." [1]. And later attempts have been made to prevent government officials from employing their official positions, either by intimidating their subordinates or by distributing patronage to those whom they wish to conciliate, to per-

[1] See his speech of February 22, 1839. Von Holst, speaking of Calhoun's remedy, viz.: to place the office-holders beyond the reach of the executive power, justly says: "If he had changed but one word,—if he had said *party in power* instead of *executive power*,—this advice would, indeed, have been the egg of Columbus." Of another evil which has grown out of the relation between offices and party, viz.: political assessments, that is, such as are made on office-holders of all grades by a perfectly irresponsible committee, to be expended in furthering the objects of the party, we need only make mention. Although, nominally, such contributions to the campaign fund are made "voluntarily" by the office-holders, yet their true nature is shown by many circumstances. Thus, in making its application the committee fixes the amount which each man is to pay. In 1882 two per cent. of the annual salary was required, and was levied on all, from the chiefs of bureaus to the lowest laborer in the government navy-yards, and also levied alike on Republicans and Democrats. Moreover, in case the call was not responded to, employés of the committee went among the departments and made personal application to each delinquent. By experience the clerk knows that he must pay or be discharged, a fact which still more strongly brings out the "voluntary" nature of the contribution. Thus, the final sentence of a circular which emanated from such a committee reads: "At the close of the campaign we shall place a list of those who have not paid in the hands of the department you are in." The committee may expend the fund thus collected as it sees fit, and need render an account of such expenditure to no man. Truth compels us to say that it forms a "corruption fund" for influencing elections, and the manner of expending it is as vicious and debauching to the public service as is the manner of collecting it. This matter has also been made the subject of legislation, but without any remedy being afforded.

petuate their own party in power. But the evil cannot be cured by such legislation, and a much more radical reform must be adopted before it can be remedied.

To such an extent was the abuse of patronage carried, that in 1853 and 1855, acts were passed by Congress, requiring examinations for admission into the public service in departments at Washington; but owing to defects in the law, and the strong determination of those who possessed the patronage to ignore its provisions, it was never effectively put into operation.[1] And it was not until 1871 that any decided step was taken to reform the civil service. In that year the president was authorized to "prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability, for the branch of service into which he seeks to enter";[2] and this resulted in the appointment of a civil service commission. This commission framed a system of competitive examinations, open to all alike and uniform in the departments; but owing to the want of the

[1] "Sec. 163. The clerks in the departments shall be arranged into four classes, distinguished as the first, second, third, and fourth classes.

"Sec. 164. No clerk shall be appointed in any department in either of the four classes above designated until he has been examined and found qualified by a board of three examiners, to consist of the chief of the bureau or office into which such clerk is to be appointed, and two other clerks to be selected by the head of the department."—"Revised Statutes."

[2] Act of March 3, 1871.

support of Congress, the commission was obliged to limit its operations, and the old system of appointing was practically continued. In 1875 a new system was introduced for making appointments in the treasury department, by which offices were apportioned among the States in proportion to their respective populations[1]—a measure which did not in the least remedy the evils existing under the old system.

On the accession of Mr. Hayes to the presidency a renewed attempt to reform the service was made, and it had at the first the support of the president. But, so far as a general system of reform, applied to all departments of the government, but little progress has been made. Individual officers have put into force such rules and regulations as seemed to them best suited to secure efficient office-holders in their own department (by Mr. Schurz in the interior department, Mr. James in the post-office of the City of New York, and Mr. Burt in the naval Office of New York), and the commission[2] has done good service in its reports and in the work it has

[1] "That the duties heretofore prescribed by law and performed by the chief clerks in the several bureaus named shall hereafter devolve upon and be performed by the several deputy comptrollers, deputy auditors, deputy register, and deputy commissioner herein named: *Provided*, That on and after January 1, 1876, the appointments of this Department shall be so arranged as to be equally distributed between the several States of the United States, Territories, and the District of Columbia according to population." Approved March 3, 1875.—"Statutes at Large," volume 18, pages 398 and 399.

[2] The chairman of this commission, Mr. Dorman B. Eaton, deserves special mention for his endeavors to effect a true reform; and his writings on this subject contain the best and most complete study of it

actually performed in the New York Custom House and elsewhere. And wherever a system of competitive examinations has been introduced under proper restrictions, the best of results have followed. Politics have been eliminated, influence and recommendation are of no weight, and the office becomes what it should be, for the transaction of business, and not to give aid to party. There is no valid reason, theoretical or practical, why these methods of appointing should not be universally employed.

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PART II.

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CONTENTS.

American Citizen's Manual

CHAPTER I.

PROTECTION TO LIFE AND PROPERTY.

The primary object of government is to protect the life and property of its subjects; and all the functions of government are intended to be used for attaining this object. In a society advanced in civilization, where the interests, occupations, and standing of its members are so different, it is natural that questions of right and of privilege should continually arise; and unless there was the proper machinery to define and realize these rights, the society would soon break up in discord. It must be recognized that in a society for every right that a member possesses there is a corresponding duty; that freedom is never separated from responsibility. Thus if I wish my property to be respected, I must respect the property of others; if I am to remain uninjured, I must not do hurt to my neighbor. And while at first sight it seems that by incurring such obligations, by entering into a society the liberty of the individual is lessened, a closer and more just examination will show that it is increased, and unless these

obligations were assumed, liberty could not exist. For every man would be forced to devote his whole time and energies to defending his life and property, and in such a condition little or no advance could be made in civilization.

Government is instituted to give that protection to life and property which could not be obtained so efficiently by any other means; and the whole powers of government are directed to this end. Thus the constitution of Alabama recites that "the sole and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property; and when the government assumes other functions it is usurpation and oppression" (art. i, § 37). "All men," say many of the State constitutions, "are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property," etc. These rights are protected by a general provision in the Federal Constitution: "No person shall be deprived of life, liberty, or property without due process of law."[1] And so jealously is the liberty of the citizen guarded that the Constitution, as will be shown, expressly defines what is meant by "due process of law."

In what manner government has protected the

[1] The constitution of Kentucky says that "absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic—not even in the largest majority."

lives and property of its citizens cannot here be shown. Laws are framed and executed to attain this object; justice, resting on laws, is administered to secure rights and redress wrongs; and so complex is the constitution of society, and so intimately is it connected with government, that not a measure is carried through the Legislature without affecting, directly or indirectly, the rights of persons or of property. To undertake to give an outline of what has been done to protect persons and things against violence and fraud, to maintain rights and punish crimes, would involve an outline of the body of the law. Only a few of the more important provisions can be noticed, and these may be considered either as protecting *persons* or as protecting *things*, though it is often difficult to maintain the distinction.

Personal Rights.

The personal security of the citizen involves security of life, of body and limb, and of reputation. No person can be deprived of life and liberty without due process of law. That is, no person can be held to answer for a capital or otherwise infamous offence, or for any offence above the common-law degree of larceny, unless on a presentment or indictment by a grand jury.[1] In all criminal prosecutions the accused shall be given a speedy and pub-

[1] Except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger.

lic trial by an impartial jury of the State and district where the crime shall have been committed; he shall be informed of the nature and cause of the accusation, and be confronted with the witnesses against him; he shall have the assistance of counsel for his defence, and may compel the attendance of witnesses in his favor; nor shall he be compelled to be a witness against himself. Excessive bail cannot be required or excessive fine imposed; nor cruel and unusual punishment inflicted. Nor can the accused be subject for the same offence to be twice put in jeopardy of life or limb, unless a conviction has been set aside or reversed on account of some error in the trial. These principles apply alike to public and private encroachments on the personal liberty of the citizen,—to those committed by the State and by individuals.

The highest form of personal liberty is the power of locomotion, of changing situation, or removing one's person to whatever place one's inclination may direct, without imprisonment or restraint.[1] And to secure this right a most efficient instrument is the writ of *habeas corpus*, by which the question whether the person on whose behalf it is issued is lawfully detained, is brought before a court or a judge. If the detention is shown to be illegal, whether from a false charge or an error in the mode of securing the arrest, the prisoner is at once discharged from cus-

[1] I Blackstone's Commentaries, 134.

tody. And as this writ applies not only to commitments on criminal charges, but also to detentions on any pretext whatever, it is justly regarded as the great bulwark of personal liberty. Both Federal and State courts may issue the writ, and conflicts of jurisdiction have frequently occurred. But it has been determined that the Federal courts may issue it only in cases which come under their jurisdiction, where such jurisdiction has been expressly or by implication conferred by the Constitution ; and, on the other hand, a State may not interfere with a prisoner held under the authority of the United States. Application for the writ may be made to the proper officers by the person in whose behalf it is to be issued, or by some one acting in his behalf. It is noteworthy that this important writ is comparatively little used ; its very existence, and the knowledge that it may be readily obtained and enforced, prevent such illegal detentions as would require the remedy.

The importance of this safeguard to personal liberty has raised the question : In what branch of the government does the power of suspending the writ reside ? It has been recognized that emergencies may arise in which such a suspension may be necessary, for both State and Federal constitutions contain a proviso that "the privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." During the civil war the President

suspended this privilege, but his power to do so was questioned by so high an authority as the then chief-justice, who maintained that Congress alone could under the Constitution exercise the power of suspension. In 1863, however, Congress by statute conferred the power on the President,[1] and under this law the privilege was suspended in some of the Southern States as late as 1871.[2]

There are other important protective measures for securing the freedom of the individual in his actions: such as the prohibition against the quartering of soldiers in any house in time of peace without the consent of the owner, or in time of war but in a manner to be prescribed by law; the right of peaceably assembling, and of petitioning the government to redress grievances; and the right to keep and bear arms. Some of these arose from the situation at the time the Constitution was framed, and have lost much of their force because never called into operation. Neither Congress nor the Legislatures of the States can pass a *bill of attainder*,[3] which is a con-

[1] 12 U. S. Statutes at Large, ch. 282.

[2] This last instance arose from a series of outrages perpetrated against the colored people of certain States of the South by organized bands known as the Ku Klux. As the States were unable to afford protection against these attacks Congress empowered the President to do so, and in certain counties he suspended the writ of *habeas corpus*.

[3] The essential elements of a bill of attainder [in addition to declaring certain persons attainted, and their blood corrupted, so that it could not inherit property] "which distinguish them from other legislation, and which made them so obnoxious to the statesmen who organized our government, are: 1. They were convictions and sentences pronounced by the legislative department of the government, instead of the judicial. 2. The sentence pronounced, and the punishment inflicted, were determined by no previous law or fixed rule. 3. The investigation into the guilt of the accused, if any

viction by the Legislature for an alleged crime, with judgment of death. The constitution of the Legislature is not such as to make it a calm, just, and temperate judge of crime, especially when public feelings are excited, and when acts done for party purposes might be construed as "crimes." Many of the States during the Revolution did make use of such extreme measures, deeming the emergencies of the public service to be such as to require them; and it was doubtless this experience which led to a constitutional prohibition of them. Another example is the prohibition of *ex post facto* laws, or laws designed to punish acts which when committed were not punishable. The prohibition has, however, been limited to laws respecting criminal punishments, and not to retrospective legislation of any other description.[1] And a further limitation to the term has been accepted as just:—a law which mitigates or lessens the punishment of a crime, though it is retrospective, is not an *ex post facto* law; but one that creates or aggravates the crime, or in-

such were made, was not necessarily or generally conducted in his presence, or that of his counsel, and no recognized rule of evidence governed the inquiry."—Ex parte Garland, 4 Wal., 388.

[1] Cooley, "Constitutional Limitations," p. 264. "I will state what laws I consider ex post facto laws, within the words and intent of the prohibition. 1. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action. 2. Every law that aggravates a crime, or makes it greater than it was when committed. 3. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. 4. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence, in order to convict the offender."—Calder *vs.* Bull, 3 Dall., 390.

creases the punishment, is such a law, and cannot be applied to acts committed before the law went into force.

In 1865 Congress passed an act to exclude from practice in the United States courts any person who was unwilling to subscribe an oath or affirmation that he had not taken up arms against the government in the Rebellion; nor aided, counselled, or encouraged its enemies; nor yielded a voluntary support to any pretended government or authority hostile to that of the United States. When this law was brought before the Supreme Court, a majority of the court held that it was unconstitutional, because it was of the nature of an *ex post facto* law, inflicting a punishment for past conduct. This decision has not, however, been generally accepted, though on the same principle a clause in the constitution of the State of Missouri, which excluded all priests and clergymen from teaching, unless they should first take a similar oath, was declared void.

Nor is the idea of personal liberty confined to safety of body. It extends to character, and the laws of every State furnish a protection to good name and reputation against slander and libel.[1] And while freedom of speech and of the press is guaranteed in Federal and State constitutions, any

[1] "*Slander* is the verbal attack on private character, and to be punishable must involve such damage as may be recognized and computed; in *libel* the assault is more deliberate and formal and injurious, as it is committed through the agency of the press."—Pomeroy, "Intro. to Municipal Law," § 641.

abuse of such freedom may be punished. It is difficult here, as indeed it is in all the protections thrown around the liberty and property of the citizen, to discriminate between public and private acts. Thus, to libel a neighbor is a private act ; but it has been seen that legislators enjoy special exemption in regard to what they may say in speech or debate, and the same privilege is, within certain limits, allowed to witnesses and counsel in court. Then, again, the press is essentially of a public character. "Upon politics it may be said to be the chief educator of the people ; its influence is potent in every legislative body ; it gives tone and direction to public sentiment on each important subject as it arises ; and no administration in any free country ventures to overlook or disregard an element so pervading in its influence, and withal so powerful." [1] A certain freedom is essential, and in the case of a private individual a remedy is afforded if the freedom be exceeded. In the case, however, of officers and candidates for office, on grounds of public policy a wide latitude is given to the press in its criticisms, provided, however, such criticisms are confined to their qualifications for office, and do not impugn character. The final decision must be made with the ballot-box. "Talents and qualifications for office are mere matters of opinion, of which the electors are the only competent judges." [2] In like manner, the actions and motives

[1] Cooley, "Constitutional Limitations," p. 452.
[2] Mayraut *vs.* Richardson, 1 Nott and McCord, 348.

of public officials may be criticised in the press, but the line between liberty and license, between legitimate criticism and libel, is difficult to determine. As the publication of the proceedings of Congress is provided for by law, it may be regarded as privileged.

Can an action lie against a person for libelling the government, which is a public act? No such prosecutions could now be maintained in the courts of the United States. But during the brief existence of the Sedition Law, passed in 1798, such actions could be and were maintained. Penalties were imposed for the publication of false, scandalous, and malicious writings against the government of the United States, either House of Congress, or the President, with intent to bring them into contempt, to stir up sedition, or to aid or abet a foreign nation in hostile designs against the United States. "One could hardly in public speech have criticised the constitutionality of an act of Congress, or censured an officer under the present administration as he might deserve, without incurring the risk of a public prosecution, instigated by interested parties."[1] So unpopular did this measure become, that it was soon repealed, though not before some prosecutions were carried through under its provisions. There is no necessity for such a law, for, as Judge Cooley shows, the power of amending the constitutions, State and Federal, and

[1] Schouler's "History of the United States," vol. 1, p. 397.

thus of remedying abuses, does away with the necessity of prosecutions for libel on the system of government.

Freedom of belief in religious matters is guaranteed both by the Federal and State constitutions,[1] and in a majority of the States no religious test is required as a qualification for office or public trust. In Arkansas, however, "no person who denies the being of a God shall hold any office in the civil department of this State, nor be allowed his oath in any court." And Mississippi requires, in addition, a belief in a future state of rewards and punishments. But such requirements are exceptional, and, as a rule, perfect religious tolerance and freedom exist. A State church has never existed in this country since the formation of the government.

Such, then, are the more important safeguards that have been thrown around the personal liberty of the citizen. There are cases, however, when none of these will hold; as, for instance, in time of sedition or insurrection, when the privilege of the writ of *habeas corpus* may be suspended, arrests may be made without warrant, the press may be silenced, and when civil government is replaced by military rule. In ordinary times the protection against fraud and violence is ample.

Protection to Property.

The constitution of every State, as well as the

[1] Against the religious practices of the Mormons alone has political action on the part of the Federal government been taken.

Federal Constitution, provides that property shall not be taken from an individual without due process of law. And this includes the right to acquire, possess, and use, and to exchange or part with such property as belongs to the citizen, provided he acts in all respects in accordance with the law, and does not use his property in such a way as to injure the rights of others or the welfare of the State.

An important provision of the Federal Constitution forbids any State to pass any law impairing the obligation of contracts[1]; and no like clause of the Constitution has given rise to so much litigation and discussion. Thus, every charter of incorporation granted for private benefit, implies a contract between the Legislature and the corporators; and the State cannot resume the franchise thus granted, or even diminish the benefits derived from it, without the consent of the corporators, unless this right is expressly stated in the charter. And this provision against the impairment of contracts applies to contracts formed between States, between a State and its citizens, as well as between private parties. Thus, when new States were formed from the territory claimed by some of the thirteen original States, there were claims for land under grants from one of the old States. If the new State agreed to secure and make valid all such claims by the laws then existing, it

[1] In certain cases, as when contracts are entered into with an infant, lunatic, or married woman, the State exercises its right of guardianship and interferes.

could not later pass new laws, making new conditions of ownership. Again, a State may exempt from taxation certain descriptions of property; and the inducements thus offered may be made use of by private parties. If some equivalent benefit accrued to the State, it could not afterward tax such property, because there was an implied contract between the State and those who invested in such property, that it should be free from taxation. Many States have entered upon extended and costly systems of internal improvements, undertaking to build and equip roads, railroads, canals, etc., etc.; and, in order to secure the necessary funds, issued bonds which were purchased in the faith that the State would redeem them at the proper time, and pay the interest on them in the meantime. Some States have repudiated such bonds, forgetting that such action destroys their credit, without which a State cannot borrow in times of necessity; and it is still an open question whether the payment of the bonds can be enforced by any power other than a sense of honor on the part of the State by recognizing its just debts. Repudiation is a violation of contract, but the remedy is still to be found.

Nor is the right of property inviolate; for the public welfare may demand the destruction or seizure of private property. In a conflagration buildings may be purposely demolished with explosives in order to check the progress of the fire. And even in the

ordinary course of events private property may be taken to be devoted to public uses, but in all such cases the constitutional provision, that just compensation must be made to the owner, must be recognized. Moreover, such property must be taken for public uses only, for there is no power given to any branch of the government to enact laws for taking property from one private individual and bestowing it upon another. Such a power would be subversive of all the rights of property. But when private property is required for public ends there are two methods of taking it: First, by *taxation*, which will be treated of in a separate chapter; and secondly, by the *right of eminent domain*. The right of eminent domain recognizes that the State has never entirely parted with its power over the property of the individuals in the State, but may resume it when the public necessities require it. It is exercised when a State compels an owner to part with his property, under the plea that it is necessary for public purposes, and as it amounts to a special burden on such an owner, a special recompense is paid by the State. This recompense is usually determined by a number of disinterested parties. Thus, when a road or highway is to be opened by the local authorities, in New York and generally in other States, the land must be taken by town officers, appointed on the application of twelve freeholders, and the value of the lands and and the amount of the damage are assessed by a jury, and paid to the owner.

Congress has no power to issue general warrants for the arrest of persons, the searching of houses, or the seizure of papers and effects, but every warrant must issue on probable cause, supported by oath or affirmation, and must particularly describe the place to be searched, and the person or things to be seized. The granting of general warrants to revenue officers, empowering them to search suspected places for smuggled goods, without any previous evidence of guilt, was one of the immediate causes of the Revolution. And it was to prevent the repetition of such arbitrary and unjust proceedings that the prohibition was inserted in the Constitution. Yet a similar abuse of power arose under section 3,065 of the Revised Statutes of the United States. With the object of enforcing the revenue laws of the country it was provided that any officer of the customs, suspecting the concealment of any merchandise in any particular dwelling-house, store-building, or other place, could obtain a warrant to search such places. As a share of the proceeds of such seizures was paid to the informer, a system of oppressive searches and seizures of books and papers was instituted in New York City by some customs officers, which was carried to such an extent as to arouse the community against the perpetrators, among whom the most notorious was one Jayne, and compelled a cessation of such measures.

The common doctrine is that a man in his own

house is exempt from unreasonable search and seizures, and that only in certain cases, where guilt is proved, or where it is necessary to obtain evidence of guilt (as in gambling houses, gaming or counterfeiting, etc.), can such warrants be issued, and even then they must be issued in accordance with the law. In like manner, private correspondence while passing through the mails should be inviolate, or at least should not be subject to be opened at the discretion of a ministerial officer.[1] And the same principle applies to private telegrams, though on this point there is a diversity of opinions. In some cases the telegrams have been produced in court on a warrant, in others they are recognized as beyond the control of the court. The dangers attending the granting of any warrant for search or seizure are so great that they should be guarded against by an excess of caution rather than otherwise. "A statute which should permit the breaking and entering of a man's house, the examination of books and papers with a view to discover the evidence of crime, might possibly not be void on constitutional grounds in some other cases [*i. e.* than lottery and gambling houses, search for stolen goods, etc., etc.], but the power of the legislature to authorize a resort to this process is one which can be properly exercised only in extreme cases, and

[1] President Jackson in 1835 desired Congress to pass a law prohibiting, "under severe penalties, the circulation in the Southern States, through the mail, of incendiary publications intended to instigate slaves to insurrection." A bill containing this proposition in a slightly modified form was prepared by Calhoun, but failed of passing.

it is better oftentimes that crime should go unpunished than that the citizen should be liable to have his premises invaded, his trunks broken open, his private books, papers, and letters exposed to prying curiosity, and to the misconstructions of ignorant and suspicious persons, and this under the direction of a mere ministerial officer, who brings with him such assistants as he pleases, and who will more often select them with reference to physical strength and courage than to their sensitive regard to the rights and feelings of others. To incline against such laws is to incline to the side of safety." [1]

Another important inference to be drawn from the provisions of the organic laws of the country is that one of the objects to be secured is *equality* as well as *freedom*. Thus, the Federal Constitution says: "Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (art. iv, §§ 1–2). This prevents any discrimination being made by one State against the laws or citizens of another, and thus secures equality of privileges for all. These privileges are: "Protection by the government; the enjoyment of life and liberty, with the general right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject,

[1] Cooley. "Constitutional Limitations," p. 306.

nevertheless, to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of *habeas corpus;* to institute and maintain actions of every kind in the courts of the State; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise, as regulated and established by the laws or constitution of the State in which it is to be exercised." [1]

To define and secure these rights of persons and of property, the *police power* of the State is called into action. In a narrow sense the police power is instituted to maintain public order, and to protect the liberty, property, and safety of individuals; and as such it is a matter of local concern. Every city or village of any size has an organized body of paid guardians of the peace, which is technically known as the police. In this sense also it includes the judiciary, for its purpose is to afford redress of injuries and punishment of wrongs. The instances to which

[1] Corfield *vs.* Coryell, 4 Wash. C. C., 380.

this police power applies are too numerous to be here mentioned. It extends to almost the whole sphere of municipal action. It may regulate the manner in which roads and public highways are to be used ; it may regulate the markets, the weights and measures to be used, the sale of unwholesome or adulterated food, and the sale of poisons ; it may establish limits within the denser portions of cities and villages within which buildings shall not be constructed of inflammable materials, or within which certain trades and occupations hurtful to the public health or safety shall not be pursued. Many other instances of the exercise of this power will be met with in the following chapters, but enough has been said to show how extensive and pervading it is.

In its wider signification, however, the police power of the State includes all that relates to the general welfare of the community. In this sense the succeeding chapters on health, pauperism, commerce, etc., are but descriptive of the police power of the State.

CHAPTER II.

THE FEDERAL GOVERNMENT.

Under the Constitution certain powers are granted exclusively to the Federal government, and others are reserved to the State governments. In other cases the Federal and State governments possess concurrent powers, and may each within certain limits exercise control or regulation of the same subject-matter. Again, some of the functions granted to the Federal government may not be exercised; and until they are, the States may enact laws covering the subject. Such, for example, are bankrupt laws. The power given to Congress is intended to secure uniformity of regulation, and when exercised, at once renders void all State legislation on the subject. This division of powers offers a basis for a division of chapters while considering the functions of the two classes of governments, and it will be adopted so far as it may be possible to do so. It must be premised, however, that the division is not a strict one, and some doubt may arise whether a certain function properly belongs to the State or the Federal government. For in some cases the Fed-

eral government has usurped functions which would more properly belong to the State governments ; as, for example, the making of local improvements under the plea of protecting and regulating commerce. Again, in governing the District of Columbia, the Federal government is in reality a State government, and as such establishes and maintains jails, hospitals, etc., lays out streets, and performs all the duties of a municipal government. So that to prevent misconception, when the Federal government is spoken of, the national government, that which exists for the nation, is meant.

War Powers and Foreign Relations.

The experiences of Congress in attempting to secure and maintain an army under the Articles of Confederation clearly showed that it should be able not only to declare war but to raise armies ; that it was essential to have all war powers concentrated in the Federal government. And when the Constitution was framed this idea was carried out, and nothing is left to the discretion of the States. As war powers are a mark of sovereignty, Congress alone can declare war, raise and support armies, provide a navy, establish rules for regulating the same, and exercise a certain control over the militia. Even in peace, a State must obtain the consent of Congress before it can keep troops or ships of war. These powers are exclusive ; and are only limited

by the provision that no appropriation of money for the army shall be for a longer term than two years. The power of declaring war need not of necessity be employed, and in the war of 1812 only was there a formal declaration made. In the war with Mexico and in the Rebellion a state of war was recognized, and measures taken to meet it, but no declaration was made.

As an army or navy thoroughly equipped for war cannot be called at once into existence to meet an emergency, a certain amount of preparation must be performed in time of peace. And this is becoming more and more essential on account of the scientific requirements of modern warfare. On land we have guns of great power, but requiring time for their construction, and a system of manœuvring and fortifications which can only be mastered by long study and preparation. In the navy, we have the armored vessels with guns which require that skill and precision which are only to be gained by practice. The need of a trained body of men both in the army and navy is in part met by the military academy at West Point, N. Y., and the naval academy at Annapolis, Md., both government institutions.

The "peace establishment" of the army is very small as compared with the population and territory to be protected. But there is little necessity of maintaining a large standing army in time of peace, because there is no nation near at hand of sufficient

power to cope with this nation, and the popular feeling has always been opposed to maintaining such an army. A force of from 25,000 to 30,000 men has been found sufficient to do the work required of it (chiefly to keep the Indians in subjection), and the sense of security from attack has been such as to cause the militia laws to be disregarded. Whenever there has been the necessity of calling out large bodies of men, as in the war of 1812 and the Rebellion, little difficulty in securing them has been experienced. By not maintaining a large standing army when not needed, a great saving in taxation is effected, and no large number of men are withdrawn from productive employments to be supported in idleness at the expense of the community. The idea of limiting the time of appropriations for the army, was to give the people control in this matter. As a new Legislature is elected every second year, a war which is disapproved of by the people may be ended by the election of representatives who will favor and carry into effect such a policy.

When the extent of our sea-coast and commercial interests are considered, it might reasonably be expected to find a powerful navy sufficient to "police" the seas and protect our commerce. The truth is the United States has no navy, a result brought about in great part by official corruption and mismanagement. It is on the seas that we are most vulnerable, and that the greatest injury may be done

to our interests in the shortest time and with the least danger to the attacking party. For our extensive commerce would offer a rich reward to the enemy, and it is practically without protection. So long as the old methods of constructing and arming ships of war were practised, the navy of this country could successfully compete with the best vessels afloat. But within the last thirty years the introduction of steam as a means of propulsion, of iron and steel in the construction of vessels, and of armaments which require great skill in their management, has revolutionized naval warfare, and little or no attempts have been made to keep the American navy equal to the requirements of a modern navy. Measures were taken in 1882 to provide for a naval force, but it will be years before a navy worthy of the name can exist.

Congress provided for the government and regulation of the army in 1806; and of the navy in 1799, and again in 1862.

The Militia.—As regards the militia, a more extended notice will be required. The militia is primarily a local organization under State authority, and only when called out by Congress to execute the laws of the Union, suppress insurrections and repel invasions, does it fall under the control of the Federal government. To secure that uniformity which is essential in military movements, Congress prescribes the discipline to be enforced; but the State

appoints the officers, and authorizes the training of the militia. It is provided that every able-bodied citizen between the ages of eighteen and forty-five years shall be enrolled in the militia of the State in which he is a resident[1]; the manner of organization is established, and arms, pay, etc., are provided. Notwithstanding this general provision, in some States militia enrolments are unknown, and in others the appointed gatherings for training are mere burlesques upon military discipline. When called into actual service the militia is commanded by the President of the United States, is entitled to the pay, rations, etc. of the regular army, and is subject to the same rules of government. The President may call out these forces in cases of invasion, actual or imminent, and in cases of insurrection or rebellion against the authority of the United States, or of a State; and he may continue the militia in service for a period not exceeding nine months. Moreover, he alone is to judge of the exigency for calling out the militia, and his decision is conclusive upon all other persons.[2] In the war of 1812 and in the Rebellion the State forces were called into actual service, and although they showed in many cases great courage and ability, yet they were not the "well regulated" militia that is expected to be maintained. "The war of 1812 repeatedly exhibited the melancholy spectacle of large bodies of American troops marching to the

[1] Revised Statutes, § 1,625.
[2] 3 Mass., 548.

battlefield without understanding a single principle of elementary tactics ; and the first draft of national militia (call of April 15, 1861) in the late war was practically worthless ; before they could be fully organized and reasonably disciplined their terms of service began to expire, and their only actual service fittingly terminated in the disaster of the first Bull Run."[1] In 1794 certain States were called upon to furnish their quota of militia to suppress an insurrection against the Federal government (known as the Whiskey Insurrection), and the State militia has frequently been called into action by the State government to maintain order and enforce the law.

Other war powers under the Constitution require no extended notice. Congress has power to grant letters of marque and reprisal, and to make rules concerning captures on land and water. And a like power is that of defining and punishing piracies and felonies committed on the high seas, and offences against the law of nations.

The general policy of the country has, however, been such as to render unnecessary any long-continued use of the war powers of the Constitution. It is doubted if a merely aggressive war could be undertaken without doing violence to the Constitution[2] ;

[1] Robert N. Scott.

[2] "But the genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purposes of aggression or aggrandizement, but to enable the general government to vindicate, by arms, if it should become necessary, its own rights and the rights of its citizens. A war, therefore, declared by Congress, can never be presumed to be waged for the purpose of conquest or the acquisition of territory." —Heming *vs.* Page, 9 Howard, 614.

for it is believed that the power to make war can only be used in self-defence, to repel invasion and suppress insurrection. Moreover, the government of this country has pursued a policy which has kept it out of all contests that have arisen among other nations, and in which it naturally has no interest. "The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little *political* connection as possible. * * * Europe has a set of primary interests which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities." The wisdom of Washington's advice has been recognized, and a neutral policy maintained when other nations have been at war.

In one instance, however, this policy was apparently laid aside, and a hostile attitude adopted. In 1822 it was believed that an attempt was about to be made to re-establish the power of Spain over her revolted American colonies. This called out a message to Congress from the then President, Mr. Monroe, which embodied a doctrine which has since been known as the "Monroe Doctrine." "In the wars

of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy to do so. It is only when rights are invaded or seriously menaced, that we resent injuries, or make preparation for our defence. With the movements in this hemisphere we are of necessity more immediately connected. * * * We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers [Spain and Portugal], to declare, that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. But with the governments who have declared their independence, and maintained it, and whose independence we have, on great consideration, and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States."[1] This declaration has, however, since fallen into oblivion, and a "spirited" foreign policy (that is, picking quarrels with other nations without cause, and interfering with their internal concerns) has never been approved.

[1] President Monroe's Message of December 2, 1823.

Foreign Relations.

Among the first subjects pressed upon the attention of Congress in 1789 were the relations of the new nation to foreign governments. Peace must be made with England, and this was no sooner accomplished than difficulties arose with France ; the question of boundaries existed both on the north and on the south ; the treaty of peace with England gave birth to new complications, and the disturbed state of Europe, and the helplessness of the new nation, allowed the commission of depredations on our commerce. But international relations are subject to constant change, and questions of right and privilege are continually arising which could only end in war unless the proper steps to meet them were taken. The rights of the citizen are liable to be infringed, not only by his fellow-citizens, but also by the subjects of other governments, and provision must be made to protect him against such injuries, and to obtain reparation for them when actually committed. In order to conduct negotiations with foreign powers and to protect the rights and privileges of American citizens when in foreign countries, an extensive system of diplomatic and consular representatives is maintained. The measures taken to secure these ends include all the forms of communication from the interchange of friendly notes of congratulation between these representatives and the governments

to which they are sent, to the extreme measure of breaking off all communication and enforcing rights by war.

The general relations of the nation with other nations are determined by treaties, which are solemn contracts entered into by two or more sovereign states. Such contracts may define political or private relations. Thus, a treaty of peace, or one of alliance or confederation, is of a political nature ; but a treaty of commerce defines private relations. In either case the treaty is in the nature of a law, and not to be wilfully broken by either of the contracting parties. The power of entering into treaties as conferred by the Constitution is general, and includes all treaties that may be for the general welfare,— "for peace or war, for commerce or territory, for alliance or succors, for indemnity for injuries or payment of debts, for recognition and enforcement of principles of public law, and for any other purposes which the policy or interests of independent sovereigns may dictate in their intercourse with each other."[1] And when ratified a treaty becomes a part of the law of the land, and is above any State law that may conflict with it. There is, however, a limit to this power. "A treaty to change the organization of the government, to annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void ; because it

[1] 3 Story's "Commentaries," 355.

would destroy what it was designed merely to fulfill, the will of the people."[1]

Yet legislation has often been initiated, and powers of doubtful constitutionality exercised, by means of treaties. Thus, in the case of the admission of Texas, the "annexation was made directly with Texas by Congress, and not by the President, with the advice and consent of two-thirds of the members of the Senate, as the treaty-making power. In this way, the annexation was effected with the consent of only a majority of two in the Senate, and about an equal proportion of the House, when it could not have been done by the constitutional majority of the Senate, as the treaty-making power." And again, "the President and Senate have, by treaty, repeatedly incorporated foreign territory, with all its inhabitants, granting all the rights of citizenship to all the people, of whatever race, color, or description," thus granting naturalization directly to whole classes of people, without regard to any uniform rule whatever.[2]

Although the power to form a treaty is conferred upon the President, it is never acted upon by him in person, but is exercised by one of the diplomatic representatives or by a special commissioner appointed for the purpose. A treaty while in force is binding upon Congress, and no legislation hostile to its provisions will stand, so long as it is recognized

[1] 3 Story's "Commentaries," p. 355.
[2] Farrar, "Manual of the Constitution," pp. 332–3.

as a part of the law of the land. But until a treaty has the concurrence of Congress it is not a part of the law of the land, and while in that condition cannot bind or control the power of the Legislature. So far as the conditions of a treaty may act as local or municipal law they may be modified by the Legislature, but not in such a way as to weaken or destroy the force of the compact between the nations.

All intercourse with other governments is conducted by the Federal government, as that alone possesses national sovereignty. Were the States allowed to separately treat with foreign powers, it would produce endless controversy and in the end dissolve the Union, for each State would regard only its own interests, and these might be opposed to the interests of the other States.

The foreign intercourse of the country is conducted through persons sent abroad to represent the government in foreign countries. These representatives are of different grades and have different functions assigned to them. Thus, ambassadors, envoys extraordinary, ministers plenipotentiary, resident ministers and chargés d' affaires [1] conduct the political negotiations of the government; while the commer-

[1] It is difficult to draw any definite distinction among these representatives, and it lies chiefly in the relative importance of the governments to which they are assigned. No ambassador has ever been appointed, though the title occurs in the Constitution. To England, France, Mexico, China, etc., are sent envoys extraordinary and ministers plenipotentiary; to Belgium, Sweden, Turkey, etc., ministers resident; while in Greece, Switzerland, Paraguay, etc. are found only chargés d' affaires. In special cases commissioners may be appointed. The privileges of diplomatic officers are properly subjects of international law, and do not concern us here.

cial interests of the country abroad are entrusted to agents called *consuls*.[1] Questions are also sometimes referred to a number of judges or arbitrators, chosen either by the two nations most interested in the dispute, or by other and neutral nations. Thus the differences between the United States and Great Britain arising from the so-called "Alabama" claims, were referred to five arbitrators named by England, the United States, the Swiss Republic, the King of Italy, and the Emperor of Brazil. It is still a question as to how far international arbitration may be depended upon in the settlement of differences between independent nations; and although it has thus far been applied only to questions of secondary importance, it is one of the recognized methods of determining matters in dispute. Another means is by a congress or convention, in which the governments are represented by diplomatic or specially appointed persons. As an example of such a congress may be mentioned that of Berlin in 1878.

Regulation of Commerce.

Congress has power to regulate commerce with

[1] The duties of a consul are various. He has the care and protection of American seamen abroad, and adjusts all disputes between masters and men. The collection of extra wages when the seaman is entitled to a discharge, and the granting of such discharge; the relief of distressed seamen; the care of such as require medical relief; the sending to home ports of such destitute seamen as cannot ship in a foreign port; the care of wrecked property of United States citizens; the care of estates of citizens dying abroad,—are but a few of his duties. He must also know the market value of all articles of merchandise exported from his consular district, and see that such values are stated in each invoice certified by him. He is thus a part of our customs service, for these invoices form the basis for collecting duties on imported commodities. A consul need not be a citizen of the United States.

foreign nations, and among the several States, and with the Indian tribes. Originally each State made such regulations concerning its trade as best suited its own interests, irrespective of the interests of other States. But the contests which arose from each State endeavoring to gain advantage over its neighbors, were a strong argument for a closer union; and when the Constitution was framed, taught by experience, the States granted to the central government the power to regulate foreign and interstate commerce. The regulation of the internal commerce of a State, whether by land or water, was reserved by the States.

This grant of power, so general in its terms, has given rise to a number of interesting and complex questions as to the extent to which it may be carried. Does a power to "regulate" imply a right to destroy, and is it within the power of Congress to interrupt all intercourse? In December, 1807, Congress laid an embargo on all ships and vessels in the ports and harbors of the United States, and prohibited the exportation from the United States, either by land or water, of any goods, wares, or merchandise of foreign or domestic growth or manufacture, and at the same time stringent measures were taken to enforce the embargo. Yet on the plea of national necessity, this extreme measure, which for the time caused a complete interruption of commerce, entailed heavy losses on those interested

in mercantile pursuits, and almost caused an open revolt against the government, was declared to be within the meaning of the Constitution. At the same time a very high legal authority asserted that "the measure of a general embargo, indefinite as to time as that laid in 1807, went to the verge of implied constitutional power."[1] It is doubtful if any such radical measure could be now even proposed,

A number of different subjects belong to the term "commerce" as here employed. "Commerce, in its amplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulations. Ship-building, the carrying trade, the propagation of seamen, are such vital agents of commercial prosperity, that the nation which could not legislate over these subjects would not possess power to regulate commerce."[2] And, accordingly, there are found laws to define the privileges of American and foreign ships, both in the foreign and domestic or coasting trade, and in the fisheries; to protect the rights of seamen; to establish quarantine regulations, and to protect navigation by erecting light-houses, placing buoys and beacons, and main-

[1] Story, "Commentaries."

[2] Gibbons *vs.* Ogden, 9 Wheaton, 229.

taining a life-saving service, and a complete system of coast surveys. Congress has passed statutes regulating steamboats, their construction, equipment, officers and crew, prescribing qualifications of pilots and engineers, limiting the number of passengers they may carry, and laying down the signals they shall use in passing each other, etc., etc. All of these miscellaneous powers are exercised as regulations of commerce.

It must be admitted that some of the laws now in force, which were passed as regulations of commerce, are directly opposed to the interests of commerce, and to the spirit of the age. Take for example the narrow and selfish policy of the so-called "navigation laws." Under the mistaken belief that ship-building and navigation could thrive in this country only when sheltered from the competition of other nations, and that such protection could be better furnished by legislation than by labor, thrift, and skill combined with natural advantages, stringent laws were early passed and are still in force, preventing the purchase of a foreign vessel and its enrolment under the American flag; forbidding a foreigner to be interested "directly or indirectly, by way of trust or confidence, or otherwise" in an American vessel, or "in the profits thereof"; or to command or be an officer of an American vessel; and prohibiting a foreign vessel to engage in the coasting trade, that being specially reserved for

American citizens.[1] And notwithstanding that other nations have adopted liberal commercial policies, granting to American vessels all the privileges that native vessels enjoy, the policy of this country has remained almost unchanged since it was first imposed in 1790. These restrictions have done almost irreparable injury to an industry that at one time ranked next to agriculture; and it is due to them, and to a like policy applied in other ways, that we no longer build our own vessels, or carry our own commodities. And not content with effecting this, foreign capital is prevented from engaging in ship-building in this country, or in ship navigation (though all other branches of industry are open to it), nor can American capital be invested in foreign vessels and retain the protection of the American flag. The sooner these laws are abolished the better for the navigation interests of the country. They present a very good example of over-legislation, and have resulted in nearly legislating out of existence an important industry.

In addition to these numerous direct regulations of commerce, which are defended as being within the provisions of the Constitution, Congress may, in exercising other powers granted to it, impose indirectly commercial regulations. Thus, a duty on imports, though imposed as a revenue measure, may affect commerce, as may also a system of harbor or con-

[1] The absurdity and injurious results of these laws have been fully and ably treated of by Mr. David A. Wells, in "Our Merchant Marine" [1882]

sular dues, oppressive taxation of capital invested in ships, docks, or other implements of trade, etc. In defining by treaty the relations between two powers, the regulation of their commerce is an important point. These will be more properly considered when the taxing and treaty powers of Congress are considered.

The power of Congress to regulate commerce is not without limit. The chief object in ceding this power to the Federal government was to gain uniformity of regulation and hence equality. "No preference," says the Constitution, "shall be given by any regulations of commerce or revenue to the ports of one State over the ports of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another."

At the time the Constitution was framed the chief means of transportation were sailing vessels, and the great revolution in commerce which the introduction of steam on land and sea was to produce, was not thought of. For this reason Congress has had little occasion to regulate commerce among the States, though the decisions of the Supreme Court have exerted a marked influence. But of late the great increase in railroad construction and operation, and the tendency of these corporations to misuse the powers entrusted to them, and to discriminate against persons or against localities in their charges for transportation, have caused the question of inter-

state commerce to assume an importance it never had before. As a railroad derives its charter from the State, and is therefore unquestionably a proper subject of State regulation, some of the States have undertaken to control, through commissions, the railroads within their boundaries. But when a railroad passes through the territory of more than one State, only that part of it which lies wholly within one State can be controlled or regulated by the government of that State; and it therefore happens that a road may be subject to as many different sets of regulations as the number of States it enters. For this reason the belief has gained ground that Congress should assume control, and take measures to regulate charges for transportation, and thus prevent discriminating rates between places, and also prevent a combination or "pooling" of railroads in their own interests as opposed to interests of the public. No measure has as yet proved satisfactory to all, and the subject is so complex, and so bound up with many interests which may be injured rather than benefited by legislative interference, that we must refer to works specially devoted to it.[1]

Naturalization.

Congress alone can prescribe uniform rules of naturalization. By naturalization is meant the admission of an alien (that is, one born out of the juris-

[1] Such, for instance, are the writings of Charles Francis Adams, Jr.

diction of the State) to all the rights and privileges of a native-born citizen ; it is the act of renouncing allegiance to one master and becoming the subject of another. In the United States as a citizen of one State becomes entitled to the rights and privileges of every other State, it is fitting that the general government should control in this matter. In some local matters, such as granting political rights and privileges, to be exercised within its own dominions,[1] a State may place foreigners on an equal footing with its own citizens. "But State regulations of this character do not make the persons on whom such rights are conferred citizens of the United States, or entitle them to the privileges and immunities of citizens in another State."[2] That can be done only by Congress.

The English doctrine has been that allegiance to the sovereign is indissoluble and perpetual, and on this ground was practised "impressment," by which Englishmen naturalized by the United States were forcibly taken from our vessels on the high seas, and impressed in English naval duty. But after the war of 1812, which was in great part due to these arbitrary seizures, this doctrine, so far as the United

[1] Thus in Indiana "every white male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the town or precinct where he may reside." Art. II, § 2. Such provisions were common in the territories, but were abolished when they became States.

[2] Dred Scott's case, 19 How. (U. S.), 393.

States were concerned, became void, and it was recognized that by due legal process a subject of a foreign power may become an American citizen, and entitled to protection as such, and this subject has since been recognized in treaties, and duly regulated.

The provisions of the Federal laws respecting naturalization are of a very liberal character. The alien must declare on oath before a properly constituted officer, at least two years before his admission, that it is his intention to become a citizen of the United States, and he must by name renounce his allegiance to his former government. But he cannot be fully admitted before he has resided five years in this country,[1] and at least one year in the district in which he makes his application. He must be proved to be of good moral character, attached to the Constitution of the United States, and well-disposed to the good order and happiness of the same, and he must renounce any title he may possess. On fulfilling these requirements an alien becomes a

[1] The time of residence required has varied. In 1790, the law required a residence of but two years, but the law of 1795 extended the time to five years. In 1798, under the influence which secured the passage of the famous "Alien and Sedition Laws," a residence of fourteen years was required, the process of naturalization was made more stringent than before, and all white aliens who at that time resided, or might thereafter arrive, in the United States, were required to be reported and registered. In 1802 the time was reduced to five years. Until 1870 only white aliens could be naturalized; and as the act of that year extended the privilege to persons of African descent, it has recently been held (April, 1878), that the Chinese cannot be naturalized. About the year 1852, a political party known as the "Know Nothings," or "American Party," came into being, the object of which was to oppose the easy naturalization of foreigners, and to aid the election of native-born citizens to office. It existed only four or five years.

citizen and entitled to the same protection of person and property which is accorded by the government to native-born citizens. "All persons born or *naturalized* in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."—(Amend. to Const., Art. xiv).

The persons and property of naturalized citizens of the United States, while in foreign countries, are declared to be entitled to receive the same protection which is accorded to native-born citizens.[1] The doctrine that is embodied in this statute has proved a difficult one to carry out in practice, and has many times threatened to produce international complications. It is natural that many of the foreigners who migrate to this country should retain a strong interest in the affairs of their fatherland, an interest that might induce them to overstep the bounds of prudence, if not to openly violate the rules of neutrality. And this, too, whether they have declared their intention to renounce their former allegiance and become citizens of this nation, or not. Thus, to take a very recent example of the difficulties met with in recognizing this principle, an agitation was

[1] Revised Statutes. § 2,000. This statute was passed in 1870.

begun in Ireland against the manner in which land was owned and rented, and a party of the dissatisfied carried their measures of resistance so far as to be in almost open rebellion against the British government. Severe and extreme laws to crush the prevalent discontent were passed and enforced with great strictness. Meantime large sums of money in aid of the movement were sent from the United States to the Irish leaders, and many of Irish birth who had come to this country, again went to Ireland, and took an active part in the agitation. They naturally fell under the suspicion of the British officials, and in accordance with what was then the law of the land, a law that was specially framed to meet an emergency, were arrested and held for trial. The question at once arose whether in making these arrests the British government had not exceeded its powers. For some of those who had been arrested were, undoubtedly, fully qualified citizens of this country, and as such could claim its protection, while others claimed to be citizens, when in fact they were not. This is but one instance of the difficulty of extending protection to American citizens in foreign countries. The great difficulty lies in distinguishing between those who are and those who are not entitled to such protection, for it is only on special occasions, when the condition of the country is such as to make a full, fair, and speedy examination of the charges or suspicions against a foreigner difficult

or impossible, that such questions can arise. No precautions can prevent mistakes in such a situation, and if a foreigner goes voluntarily into a country in a disturbed state, and in which suspicious persons of his nationality abound, he must be prepared to be placed under surveillance and even arrest; and when arrested the only remedy is to demand a speedy trial. The fact that he has been naturalized in this country does not allow him to return to the country of his birth and break its laws without incurring punishment. It is a well-defined principle that in every state a resident alien must fully obey the laws whether of a temporary or permanent nature. In ordinary conditions full protection is given to the persons and property of American citizens in foreign countries.

Post-Offices and Post-Roads.

In every civilized nation the post-office is included in the executive department of government. The importance of maintaining a rapid communication by post among the various parts of the country, of making such communication certain and safe, and of affording its privileges at a low rate, has led to its being entrusted to the central government. Private enterprise might be more efficient in limited districts, where the profits were sufficient to tempt private capital; but in such a vast territory as the United States, where there are yet large districts almost with-

out population, and which require some postal facilities, greater uniformity, precision, and completeness are secured by entrusting the transportation and delivery of mail matter to the Federal government than would be gained by allowing private capital or the State governments to undertake it. And this has been so far recognized as to give the government a complete monopoly of it, and to prohibit by express statute any persons, under penalties, from conveying letters, despatches, or other packets from one place to another of the United States.[1] It has been urged with much show of reason that the government should for like reasons assume the control of the expresses and telegraphs[2] of the country. The chief objection to such a proposition is that the power once granted is capable of indefinite extension. If telegraphs, why not railroads; and if railroads, why not vessels, etc., so that under this plea of public convenience the government could assume control of a large number of functions which are now performed by private capital and enterprise, with or without State supervision. (See *Corporations*.)

The Constitution has placed the conduct of the

[1] U. S. Revised Statutes, § 3,982. This, however, does not prevent private delivery in one place. In New York City, for example, there is a local despatch company which confines its operations within city limits, and does not therefore conflict with the statute.

[2] A law passed by Congress in 1866 grants certain privileges to telegraph companies, but stipulates that the United States may, at any time after the expiration of five years from the passage of the Act, purchase all the lines, property, and effects of the several companies at appraisement. See the "Relation of the Government to the Telegraph," by David A. Wells.

postal system in the hands of the Federal government, and Congress has made this control exclusive. Even under the Confederation Congress had power to establish and regulate post-offices from one State to another, thus leaving by implication to each State the control of its interior post-offices. But even as between States the service was very inefficient. In 1789 there were but seventy-five post-offices established in all the United States, and as the expenses must be defrayed from the income of the department, there was little opportunity for improving the service. The act of 1792 provided that a mail should be carried to and from a stated post-office at least once a week, but the high rates of postage charged proved a barrier against any extensive use of the service.[1]

From 1792 to 1838 the principle that the postal service should be self-supporting was recognized, and to that year the expenses were generally defrayed from the receipts, the few deficiencies that occurred being small in amount. In 1838 the mail service was greatly extended owing to the introduction of railroads, but until 1852 the receipts exceeded the expenditure (1848 alone excepted), and that too in spite of a reduction in the rates of postage in 1845. In 1851 another reduction in the rates was followed

[1] There were nine rates of postage fixed in 1792, varying with the distance; the lowest was six cents for thirty miles and under, and the highest twenty-five cents for distances over four hundred and fifty miles, a rate that was prohibitory, and the larger number of letters were delivered by private hands in order to escape the payment of such a high postage.

by a marked reduction in the revenue of the department, and a new policy of maintaining all post-offices already established and providing for new offices without regard to the cost of maintaining them or to the receipts derived from them, rendered necessary appropriations from Congress to provide for the increasing deficiencies. The opening up of the Western territories to settlement rendered necessary expensive mail routes and tended to increase the deficiencies, which amounted in 1860 to $10,500,000. Since that year the department has spent much more than it has earned, and it is only in the present year [1882] that there are indications of a lasting excess of receipts over expenditure.[1]

The Constitution gave Congress power to establish not only post-offices, but also post-roads. Some doubt has arisen on the proper interpretation of this power. The *Federalist* merely mentions it as a useful power,[2] and at that time there could have been no question as to its being a proper power to confer on the government, or it would have received a more extended notice. Does the power include the construction of roads? From the first act the laws relating to post-roads have merely designated the towns between which the mails were to be carried, without specifying any particular road to be used, although

[1] In 1880 there were 1,059 railway routes, aggregating in length 79,991 miles; 112 steamboat routes, aggregating in length 21,240 miles; and 9,225 star routes, aggregating in length 215,480 miles. For the details of the postal service we must refer to the annual reports of the Postmaster-General.

[2] No. xlii.

there might be two or more roads between two places. And only when an attempt to involve Congress in a vast scheme of internal improvements was the right of constructing and maintaining post-roads claimed under the Constitution.[1] If the power to construct is included in the power to establish post-roads, it is a right which has never been exercised to any extent.

Indians.

Before the Revolution the conduct of negotiations with the Indians belonged to the British crown, and after a trial of divided powers under the Confederation, this right naturally passed to the Federal government, although the Constitution confers only the

[1] In 1806 Mr. Jefferson recommended that the surplus revenues be expended for objects of general welfare; and accordingly Mr. Gallatin, in 1808, presented a plan for internal improvements. Canals were projected, and turnpike roads running coastwise and from east to west; the improvement of the great rivers and transportation facilities between all sections of the country, and a national university were included. In 1806 the first appropriation was made for a road stretching from the Potomac to the Ohio River, across the Alleghanies. The constitutionality of such improvements was strongly questioned at the time, and with every proposal for an appropriation; and in 1840 appropriations for internal improvements were wholly suspended, and the tools, etc., belonging to the government were sold at auction. A few years later, however, improvements were renewed by the "River and Harbor Appropriation Bill," which has become one of the annual appropriation bills, and reached the enormous sum of nearly $19,000,000 in 1882. The measure has been noted for the fraud, trickery, and log-rolling connected with it, and the moneys appropriated by it are largely wasted on creeks and shallows, and in gaining political influence. (See Johnston's "American Politics.") It was Mr. Webster's opinion that the United States should contribute liberally to internal improvements on the part of the States; because many of the States had constructed roads and canals, and had entered into other undertakings which involved them in great expense, created debt, and increased taxation; and while the United States shared in the benefits of these improvements it contributed nothing to the cost, as the public lands were exempt from taxation by the State. This policy was afterward carried out, and liberal grants of public lands were made in aid of State improvements.

power of regulating commerce with the Indians. The whole history of the relations between the whites and Indians is a curious one, and it is difficult to state in a few words. The Indians found it impossible to adapt themselves to the civilized conditions by which they have been surrounded, and like many other nations when placed in a like situation, they have been gradually disappearing before the higher civilization. This has been hastened by the many wars that have taken place between the Indians and the whites, and by the measures which, intended for their good, have been mistaken in their method, and have only produced harm. The Indian question to-day is but little nearer a satisfactory solution than it was in 1790, and a just and able administration of Indian affairs (like that of Mr. Schurz, when Secretary of the Interior under President Hayes) has been too infrequent to produce lasting effect.

The Indian tribes are not recognized as a part of the Union, for they are rather independent nations possessing sovereignty, and therefore the power of making treaties. Yet there are many facts which militate against such a statement of the case. Thus, the Supreme Court has determined that while an Indian nation within the jurisdictional limits of the United States was a *State*, that is, a distinct political society, capable of managing its own affairs and governing itself, yet it was not a *foreign State* in the

sense in which the term is used in the Constitution. These tribes were "domestic, dependent nations, and their relation to us resembled that of a ward to his guardian."[1] While their right to the lands they occupied was recognized, they were deemed incapable of carrying on trade or intercourse with any foreign nations, or of ceding their territories to them. The only power that can obtain a valid title to their lands is the Federal government.

Down to the year 1817, the relations with the Indian tribes which then occupied territory east of the Mississippi River, were determined by treaty as each case arose, and no general policy was framed. Each colony and each State conducted its negotiations with them solely with a view to its own immediate interests, and without regard to the general interests; and even isolated settlements or individuals could enter into contracts with them.[2] In 1817, measures were begun for removing a Southern tribe of Indians, the Cherokees, west of the Mississippi, but there was no disposition to make this the general Indian policy of the government until 1826, when such a scheme was prepared by Mr. Calhoun, the Secretary of War. Another important measure was the Indian Intercourse Act of 1834, which completed the policy inaugurated in 1825. By this important act all tribes were removed beyond the limits

[1] III Kent's "Commentaries," p. 382.

[2] An act of March 1, 1793, regulated the trade with Indian tribes by requiring that traders should be licensed by the President.

of settlement, and land sufficient to enable them to live by hunting and fishing, by stock-raising, or by agriculture, was granted to them by treaty in perpetuity. All persons save those authorized by the government were forbidden under stringent laws to hold any intercourse with them, and finally the Indians were allowed to be governed by their own chiefs, and by their own laws and customs.

The gradual settlement of the West by white men has, however, severely strained the policy embodied in the act of 1834, even when it was carried so far as to cause the Indians to be settled upon a few large reservations in a country specially set apart for them (Indian Territory), and guarded from the intrusion of foreigners by a few strong military posts. The gold discoveries in California, and the political excitements over the attempted extension of a slave system to the territories, produced a sudden influx of a population which was but little disposed to respect the rights of the Indians, though guaranteed to them by solemn treaties.[1] On the completion of the Pacific Railroad the inroads into Indian countries and the invasion of Indian rights became much more

[1] "Taught by the government that they had rights entitled to respect; when those rights have been assailed by the rapacity of the white man, the arm which should have been raised to protect them has been ever ready to sustain the aggressor. The history of the government connections with the Indians is a shameful record of broken treaties and unfulfilled promises. The history of the border white man's connection with the Indians is a sickening record of murder, outrage, robbery, and wrongs committed by the former as the rule, and occasional savage outbreaks and unspeakably barbarous deeds of retaliation by the latter as the exception."—*Indian Commission*, 1869, p. 7.

frequent, and have presented a problem which all the powers of government, directed both by war and by philanthropy have been unable to solve. Moreover, a change has been made in the status of the Indian. He is no longer treated with by means of treaties, and for certain misdeeds the treaties in existence may be abrogated; tribal unity has been undermined, and Indians may, by legislative enactment, be admitted to citizenship; he is fed, clothed, and educated by the government, and to prevent any imposition on him, all his dealings in sale or purchase are conducted through licensed traders, or agents appointed by the government; and, finally, at any time the United States can extend its laws over them without regard to any treaty stipulations that may exist. In one sense his rights have been curtailed, for he is no longer under his own chiefs and customs, nor are his relations to the government determined by treaty. On the other hand he is placed in a position where he may be more readily assimilated and made a part of the nation,[1] and thus

[1] It is to the enlightened policy of Mr. Schurz that a new departure was taken in respect to the Indians. This policy was "to respect such rights as the Indians have in the land they occupy; to make changes only where such lands were found to be unsuitable for agriculture and herding; to acquaint the Indians with the requirements of civilized life by education; to introduce among them various kinds of work, by practical impulse and instruction; gradually to inspire them with a sense of responsibility through the ownership of private property and a growing dependence for their support upon their own efforts; to afford to them all facilities of trade consistent with their safety, as to the disposition of the products of their labor and industry for their own advantage; to allot to them lands in severalty with individual ownership, and a fee-simple title inalienable for a certain period; then, with their consent and for their benefit, to dispose of such lands as they cannot cultivate and use themselves, to the white settlers; to dissolve,

offering an incentive for industry and good conduct. A trial of some time is, however, necessary to show the results of the new policy.

Indian reservations and all intercourse with the Indians are in the charge of superintendents or agents appointed by the President with the consent of the Senate; these agents and superintendents are in turn watched by inspectors, while a commission, selected by the President from men "eminent for their intelligence and philanthropy," exercise control over all expenditures made on behalf of the Indians.

The Public Lands.

From time to time the United States has come into the possession of vast tracts of unsettled territory, which it holds in trust, to be disposed of by grant, sale, or otherwise. This requires regulation on the part of Congress, and a certain amount of machinery for its management.

The States at the close of the Revolution found themselves possessed of large tracts of land, the title of which was formerly vested in Great Britain, but was passed to them. The grants of the crown to individuals and corporations had not, however, observed any limits or fixed upon any definite boundaries, so that owing to the lack of a knowledge of the country many parts were granted two or three

by gradual steps, their tribal cohesion, and merge them in the body politic as independent and self-relying men invested with all the rights which other inhabitants of the country possess."—In his Report for 1880.

times, each time to different parties. This applied especially to the country lying between the Alleghanies and the Mississippi, which was claimed by several States, Many differences among the States arose over these lands, and to quiet all claims it was agreed in 1780 that these lands should be ceded to the Federal government, to be held for the benefit of all the States. The territory thus ceded amounted to upward of 400,000 square miles.

In 1803 the Province of Louisiana, which comprised 1,171,931 square miles of territory, and extended the limits of the United States from ocean to ocean, was purchased from France at a total cost of $23,500,000. This purchase of territory could not be permitted by the Constitution, which confers, expressly or by implication, no power to increase the national domain; but it was justified on the ground that the right to acquire territory was incident to national sovereignty. And on like grounds the United States secured possession of Florida from Spain (1819), annexed Texas (1837), purchased a large tract from Mexico (1853), and Alaska from Russia (1867). While the area of the United States was originally but 420,892 square miles, by these various acquisitions it has been increased to 3,603,884 square miles.

The greater part of these accessions of territory was in an unsettled state, and the title to these unoccupied lands was at once vested in the United

States. But as the original cessions by the States were regarded as a trust, as an estate for the good of all, so these later acquisitions, some of which were paid for by general taxation, became like trusts. This the Federal government has always recognized, and while it has made regulations for the management and disposal of the lands, and provided a government while they remain a territory, it abandons all title to its possession as soon as they are raised to the dignity of a State.

Until a State government is actually constituted the power of the Federal government is supreme. No land can be disposed of until it has been surveyed, and it rests with the government to decide what sections of the country shall be surveyed and opened up for settlement. The surveys are conducted on a uniform plan, known as the *rectangular system.* Thus, the Secretary of the Interior determines that a certain part of the country shall be surveyed. The surveyors' first task is to determine accurately certain lines known as *base lines*, and at right angles to these, other lines known as *surveying meridians.* From the base lines townships of six miles square are established and numbered, counting north and south. From the surveying meridians ranges (the subdivisions of a township) one mile square are mapped out and numbered both east and west of the meridian. A range is still further divided into sections, and these sections may also be divided

into fractions of a section, into quarters or sixteenths. A quarter section comprises one hundred and sixty acres. The sections are each numbered, beginning with the northeast section, and proceeding west and east alternately. The location of even a part of a section is thus a simple matter; and the purchaser who receives a description of his land as the S.W. quarter of Section 20, Township 30, north, Range 1 east of the third principal meridian, would have no difficulty in locating his plot on the survey map; and as some boundary marks are always placed at the intersection of divisional lines, his lot would be easily found. It is the extreme simplicity of this system that has recommended its use, and so well has it served its purpose that little change has been made in it since it was first introduced nearly a century ago.

The terms on which public lands may be purchased have always been very liberal.[1] Large grants of land have been made to soldiers and sailors, to States for public improvements, for education, for colleges and universities, and for seats of governments. The total amount of land granted for internal improvements, canals, railroads, etc., is equal to about 335,000 square miles, or but 7,000 square miles less than the area of the thirteen original

[1] From the first establishment of the public land system to 1820 the price per acre was $2, but when cash sales were substituted for the credit system the price was reduced to $1.25 per acre, except such lands as are near improvements which have increased their value, where the price is $2.50 per acre.

States. The bulk of this land has gone to railroads, but the laws have ever favored the individual settler. Thus, the pre-emption act passed in 1801 placed a premium on actual settlement, by giving preference to one who entered upon a tract of land, built a residence, and improved the land, over a person who desired to purchase and hold for investment or speculation. And under the present laws a person may pre-empt not more than one hundred and sixty nor less than forty acres for a limited period, paying at the end of the period the regular price per acre to the government. A further advantage to the actual settler is offered by the Homestead act. A settler, whether man or woman, over the age of twenty-one years, head of a family, or a single person, a citizen of the United States, or having declared an intention of becoming such, may locate upon one hundred and sixty acres of unoccupied land, and after a residence thereon of five years, receive a patent therefor free of cost or charge for the land. But to secure this privilege full citizenship is required.[1]

Patent and Copyright Laws.

There is a peculiar form of property which has received special protection in the Federal Constitution, viz.: That involved in the idea of patents and copyrights. Originally the colonial governments issued

[1] The Homestead laws of the different States are fully treated in Johnston's "Encyclopædia."

patents to inventors, but on the formation of the central government this was made one of its functions. The Constitution gives Congress the power to "promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." A copyright is a patent under another name and applied to another class of objects, writings instead of inventions. The first general patent law was passed in 1790, and the Secretaries of War and State with the Attorney-General, formed the examining board. A patent could be issued to either citizens or foreigners, but in 1793 it was restricted to citizens alone, and not until 1861 was an alien allowed to take out a patent on equal terms with a citizen. Originally, and until 1861, the term of the patent could not exceed fourteen years, but in the latter year the period was extended to seventeen years.

From the beginning the patent laws have been of a liberal character, and have doubtless done much to develop the inventiveness and ingenuity of the people. "Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof,

and not in public use or for sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor."[1] And the exclusive right to use a design, whether in casting, printing of cloth, or to be worked into any manufacture, may be granted to the originator for a term of three years and six months, for seven years, or for fourteen years, as he may elect.

The conditions on which a patent is issued are that the claimant file in the Patent Office a full written document describing his invention or discovery, and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. If it is a composition of matter he must furnish a quantity sufficient to be experimented upon. If, after an examination by the proper officials, the claim is found to be good, a patent is issued covering the points claimed.[2] The owner of the patent has now exclusive property in his invention or discovery, and may use it himself or may sell the privileges it conveys to others. Under certain conditions a patent may be renewed for seven years.

In like manner, the exclusive right to use a trade-

[1] Revised Statutes, § 4,886.

[2] It is also made a condition to the validity of a patent that all articles manufactured under it must be marked with the word "patented," together with the day and year the patent was granted. A patent issued on an article first patented in a foreign country, expires at the same time with the foreign patent.

mark, that is, a distinctive sign or symbol which is at once a guarantee of the quality of the commodity to which it is attached and a protection to the purchaser against fraud, may be secured. And as certain manufactured articles may become noted for excellence of quality and of workmanship, many of such trade-marks become extremely valuable. Being associated with the article to which they are attached, a wide and profitable sale is secured. Treaties between the United States and other countries even recognize this form of property, and protect it. In this country the right to use a trade-mark is granted for thirty years from the time of registration at Washington, and it may be renewed for a like term of years. In case it is a foreign trade-mark, the right to use it expires when it ceases by the laws of the country from which it was received.

Besides property which is protected by patents and trade-marks, there is a third form, that in literary productions, which is also protected by special privileges. The term copyright applies to any thing that may be the subject of literary ownership, whether it be a book, map, engraving, dramatic or musical composition, photographs, paintings, statuary, models, or designs; and a copyright carries with it the exclusive right to publish or make and to sell the copyrighted article. Such a right is originally granted for a term of twenty-eight years, but may be renewed for fourteen years. In this country no

copyright is issued to an author unless he is a citizen or a resident of the United States. But a citizen may become the proprietor of a foreign work, and thus be able to copyright it in this country. Many propositions have been made to secure international copyright laws, by which the rights of an author to his own productions can be secured both in his own and in other countries. But up to the present time no satisfactory basis for such a treaty has been reached.

To secure a copyright in this country, the title-page of a book or a description of the article must be filed with the Librarian of Congress before the publication of the work. The copyright is then issued, and this fact must appear on the copyrighted article. After publication, two copies of the work are sent to the Librarian. A fee of one dollar must be paid when the title-page is submitted.

The infringement of copyrights, patents, or trade-marks is an offence punishable at law.

CHAPTER III.

FUNCTIONS OF THE STATE GOVERNMENTS.

It is difficult to compress into a single chapter any clear exposition of the powers exercised by the State governments. Although there is the same division of the branches of government as exists in the Federal government, no special grant of powers is made to the Legislature. The legislative power is not confined to specifically defined objects but is entrusted with a general authority to make laws at its discretion, and limited only by such boundaries as are determined by the State and Federal constitutions. "Plenary power in the legislature, for all purposes of civil government, is the rule." Moreover, each State possesses a legislative body, and as their natural conditions and constitutional limitations are not the same, and as they have not confined themselves to the same subjects, it is a hopeless task to reduce their actions to a fixed standard which may serve as a boundary to the functions of a State government. For these reasons only a few examples of State agency will be considered, and these will be such as may serve to show the extent of the power of regulation, or such

as are recognized by a majority of the States as being within their province, or such as are assuming such importance as will in time compel attention from the State.

For convenience the functions of the State and of the local governments will be treated of in the same chapter, for they are essentially the same. The powers of a county or a city government cannot exceed the powers of the State government, because the former are derived from the latter; and the Federal (so far as it may restrict the action of the State) and the State constitutions are as much limitations on the powers of the local as on those of the State government. What a State cannot perform directly, it cannot perform indirectly by conferring the power on a local government. A local government is created for convenience, and is clothed with certain powers which are to be exercised in a special district as the State directs; but these powers are only such as the State sees fit to delegate from its own functions. They possess no inherent powers of legislation,[1] and in the case of counties and townships which are created under general laws of the State, their functions are few and are wholly under the control of the State. "It must be borne in mind that these corporations, whether established

[1] The power to make *laws* belongs to the State Legislature alone. The regulations passed by a municipal council are known as *ordinances* (a permanent rule of conduct or government), and *resolutions* (an order of the council of a special and temporary character). Such ordinances, however, when authorized, have the same binding force as laws of the State.

over cities, counties, or townships (where such incorporated subdivisions exist), are never intrusted and can never be intrusted with any legislative power inconsistent or conflicting with the general laws of the land, or derogatory to those rights either of persons or of property which the constitution and the general laws guarantee. They are strictly subordinate to the general laws, and merely created to carry out the purposes of those laws with more certainty and efficiency."[1] The distinction between the powers of a State and of a local government is, therefore, one of degree, and not of kind.

No State can perform functions that are expressly prohibited to it either by an exclusive grant of the power to the Federal government or by the Federal Constitution. Thus, no State can enter into any treaty or alliance with foreign governments, nor regulate inter-State commerce, nor declare war or make peace; for these powers belong to the Federal government and should not depend on the caprice or self-interest of the separate States. Nor may a State pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; and as if to emphasize this prohibition it is repeated in the State constitutions. The State does not possess the power to violate the rights of person and of property of the citizen any more than does the Federal government, and the State government is limited

[1] City of St. Louis *v.* Allen, 13 Mo. 414.

both by the Federal and by the State constitutions. It is, however, only from the practice of States that a general list of the powers they exercise can be prepared, for the constitutions contain no enumeration of powers. "Since these charters [constitutions], while they continue in force, are to remain absolute and unchangeable rules of action and decision, it is obvious that they should not be made to embrace within their iron grasp those subjects in regard to which the policy or interest of the State or of its people may vary from time to time, and which are therefore more properly left to the control of the legislature, which can more easily and speedily make the required changes."[1] Of late years the tendency has been to define with greater strictness the powers of the State Legislature by provisions inserted in the constitutions, and especially has this been the case when arbitrary or corrupt use of legislative power may invade fundamental popular rights by causing inequality or by granting special privileges.[2]

But if the functions of the State government may not be accurately determined, it may at least be said that they are more closely connected with the individual interests of the citizen than are the actions of the Federal government. "It was long ago remarked that in a contest for power, 'the body of the

[1] Cooley, "Constitutional Limitations," p. 46.

[2] See Part I of this Manual, p. 31.

people will always be on the side of the State governments. This will not only result from their love of liberty and regard to their own safety, but from the strong principles of human nature. The State governments operate upon those familiar personal concerns to which the sensibility of individuals is awake. The distribution of private justice in a great measure belonging to them, they must always appear to the sense of the people as the immediate guardians of their rights. They will of course have the strongest hold on their attachment, respect, and obedience.'"[1] And this becomes the more apparent when the relations of the citizen to the county, city, and town governments are considered. It therefore follows that in passing from the Federal to the State functions, and from the State functions to that portion which is exercised in the minor political divisions of the State, the merely political questions become of less importance, while the police element becomes more marked. In fact, the most general definition of State powers is that they are police powers. "The police power of the State extends to the protection of lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State." And this police power can not be taken from the States, either wholly or in part, to be exer-

[1] From a speech of Genl. Hamilton in 1786, and quoted in Story's "Commentaries." The statement is not so true now as when it was made, for the Federal government concerns itself to a much larger extent with individual interests of the citizens than when it was formed.

cised by Congress. The power to establish regulations of police belongs to the individual States.

The following are some of the more important subjects which State agency creates, regulates, or controls.

Corporations.

One of the most important functions of the State, and it is becoming more and more important, is the creation and supervision of corporations. A corporation is an association of persons for a specified object, and is recognized in law as a person ; a number of persons may thus be associated for industrial or other objects, and the power of combining their capital for such purpose vastly increases the power of production. All occupations which require large capitals are conducted by associated capital, for they generally require a larger capital than can be furnished by one person.

A corporation may also be formed for the purpose of government, and all our cities are examples of such corporations. But whether formed for governmental, industrial, or other purposes, all corporations are created by and derive their powers from the State, and they are created either by general or by special laws of the Legislature. A public or municipal corporation is a part of the machinery of the State government, and its charter may be amended or even repealed by the State. The charter of a

private corporation is, however, regarded as a contract between the State and the corporators, and the privileges or franchises granted by it cannot be taken away by the State without the consent of the corporators. Nor can the terms of the charter be modified by the Legislature, unless this power has been expressly reserved to it. It may be seen how great a power for good or evil the Legislature possesses in this power of creating and conferring powers (which always involve a privilege) upon corporations, and it would be supposed that special care would be taken in granting these privileges, and in guarding the public interests from an abuse of such powers. All the means of rapid transportation and communication (save the roads and highways and the postal service), the railroads, vessels, expresses, and telegraphs of the country; the banking and insurance facilities, manufactures when conducted on a large scale, charities, and many other objects upon which private industry, skill, and speculation can be advantageously employed, are chiefly conducted by corporations created by the State. The Legislature, which can grant or withhold chartered privileges at pleasure, wields an immense power. And it will also readily be seen what a great field for favoritism and jobbery exists when special acts of incorporation are required for each case, in which special favors and special privileges may be given away by a Legislature that may be corruptly influenced, with-

out imposing any reciprocal obligation on the corporation. It will be safe to say that fully two thirds of the lobbyism, jobbery, and log-rolling, the fraud and trickery that are common to our State Legislatures, is due to this power of creating private corporations.

In addition to the limitations on the powers of the Legislature in the matter of private legislation, which has already been referred to, there are also some limitations on the powers of the corporations. Thus, the term of the charters granted is limited to thirty years; or a clause is inserted in the charter reserving to the State the right to alter, amend, or repeal it. In many cases the State exercises a general supervision over the corporations by means of boards or commissions specially appointed for the purpose, in order to see that the public interests do not suffer through them. This is a proper exercise of State agency, because many corporations possess and exercise in a measure public functions, and, therefore, when the public exigencies require it, the State may interfere and control or regulate the proper use of the functions granted to them. The powers of a corporation may be strictly defined and limited, and a corporation has only such powers and functions as are conferred by its charter; it cannot undertake to perform duties that are not within its chartered powers. Thus, a municipal corporation cannot engage in trade, or build roads or canals out-

side of its limits, or contract debts for any but municipal purposes. Nor can a bank or an insurance company construct a railroad (*Cooley*). Nor does a corporation, as a rule, have any powers outside of the limits of the State which created it. Thus, a lottery company created by and doing business in the State of Kentucky cannot do business as a corporation in Indiana, where there is a prohibition of lotteries. But in the case of many private corporations the practice of States is to recognize and protect their rights although created and clothed with powers outside of their limits. For example, a mining company may be incorporated in New York State, while the mine on which its operations are performed may be in Nevada; yet the corporation is recognized in the courts of both States.

A city government does not possess the power to create corporations. But it has power to grant to corporations formed under State laws, many valuable privileges. Thus, it may privilege a corporation to lay down, under the streets of the city, gas mains to light the streets and houses, and to charge for such light; and the same with steam pipes and electric tubes; to erect poles for telegraph wires in the streets; to maintain a line of cars or stages in the streets, etc., etc. All of these franchises are in their nature valuable to the corporations, and it would naturally be supposed that some reciprocal benefit should be required of those to whom they have been granted.

But in the city of New York (and we believe it to be a typical example) such privileges have been voted away for nothing or for a merely nominal return, and the grants have been so made as to redound more to the private interests of the city legislators than to the interests of the community. The privileges granted to a gas company are extremely valuable, and the profits of such a corporation are large, for the reason that as the plant required is costly, competition is not active or is easily crushed, and the companies may charge what they please for the gas they furnish. Yet the city receives no benefit from these corporations in return for the privileges granted, although there is no reason why when the charter was granted the city did not stipulate to have the streets lighted without expense to the municipality.[1] In some cases a certain percentage of the net profits of a corporation may be reserved to the city; or, in the case of street-car or omnibus lines, a fixed sum for each passenger carried must go to the city; but in spite of such provisions it is on all sides confessed that the city does not receive any thing like a fair return for the privileges granted.

Has a State, then, no control over its own creatures? This question naturally suggests another: How far may the State exercise its control? and it is obvious that in answering no distinction can be made between a corporation and a private individual; for if the State

[1] For example, the city of Paris (France) derives a handsome revenue from the gas company.

may impose regulations on an occupation, it does not matter whether the occupation is conducted by a number of persons as a corporation or by an individual. So that the broader question is reached: How far may the State control and regulate private business (as apart from State concerns)?

The general right of the State to determine by law the conduct of its citizens one to another, and the manner in which each shall use his own property, is unquestionable, for without law the rights of person and of property could not exist. "Every man's rights are necessarily relative, and they are measured by means of the limits which are set to the rights of others. * * * His lawful calling he is entitled to pursue at discretion, but if the calling he has chosen be one whose tendency is to disturb the peace or destroy the comfort of the immediate neighborhood, he might be driven from any thickly-settled district as a malefactor if he should attempt to establish it there; and the importance and usefulness of his trade would not protect him."[1] Examples of State interference with private occupations which may be injurious to the health, comfort, or morals of the community, are not difficult to be found. The entire license system is but a means of carrying into effect this interference. Thus, the State may determine on what conditions intoxicating liquors may be sold; it may even pass laws prohibiting the sale of

[1] Cooley in *Princeton Review*, March, 1878.

such liquors within the State, or it may give to each community to determine the manner in which they may be sold, or even to determine whether the sale shall be allowed or not (*local option laws*). It is, however, in the municipalities that this interference is chiefly exercised. Thus, in many States there still exist laws regulating ferries, common carriers, hackmen, liquor dealers, millers, innkeepers, etc.; and until a very recent period many other occupations were made subject to regulations prescribing the manner in which they should be conducted, and even the price of their services was determined by law. After a long experience of such laws, it was seen that many were nugatory and of no effect because they came into conflict with higher natural laws, and others were injurious to the occupations thus regulated. The price of an article cannot be determined once for all by law, because it is fixed and determined by a large number of circumstances over which the law has no control,—such as the cost of producing or of manufacturing, of transportation, the relation between the demand and the supply, etc. Nor can the State frame any permanent scale of charges, because it cannot take into account the almost daily fluctuations in the factors which determine the price. Nor can the State impose restrictions on a trade or occupation (unless they are essential to the public good, some instances of which will be shortly noticed) without working in-

jury to that trade or occupation. Thus, a State should not restrict the hours of employment (*eight-hour laws*); it should not undertake to determine the number of apprentices to be taken, nor to regulate the remuneration of labor.[1] The wages of labor cannot be determined by law; and the legislator who proposes to accomplish this may be safely regarded as an ignorant demagogue, who holds out to the laborer a promise which he can never fulfill. The price of labor depends upon no other principle than does the price of any other commodity, being bought and sold just as flour or iron is; and any law which attempts to determine the remuneration of labor, or which interferes in any way with its normal action, only does injury to the interests of the laborers for whose benefit the law was ostensibly framed. Another common error is the vain attempts to determine the rate of of interest on loaned capital, by fixing a maximum rate of interest (*usury laws*). Although the futility of such laws has been clearly recognized in other cases, such as bread, or wheat, yet it has only in part been recognized in connection with capital. These laws, so far from producing the effect intended, viz., a low rate of interest, have an exactly opposite effect; for to evade them a certain amount of risk must be incurred, and this risk must be paid for at a corresponding high rate.[2] In fact, it

[1] The same reasoning applies to interference by trades unions, which are in many respects worthy of all praise, but which have also been guilty of much that is mischievous.

[2] See a tract issued by the Society for Political Education, on this subject.

may be laid down as a general rule, that the State should interfere as little as possible with individual enterprise, except so far as is necessary to an enforcement of its police regulations ; for private capital will seek to obtain every advantage within its reach, and it will best be able to do this when not hampered and restricted by limitations on its actions which legislators ignorant of the business have seen fit to impose.

Some exceptions to this general statement must, however, be noted. A man may maintain a ferry for his own use, or for the use of his family, and he pursues a strictly private occupation. But if he maintains a ferry for the common use of all, and charges a toll for every passage, he pursues an occupation which becomes of public consequence and affects the community at large. He now becomes amenable to regulation by the State, because a privilege which is in its nature exclusive has been granted to him, and in return he owes something to the community, and because the public good requires that all public ways shall be under the control of the public authorities. Thus in the case of ferries he must provide suitable means at all suitable hours for the conveyance of passengers and merchandise, and his charges must be reasonable. These obligations may be imposed by law, and the law may even restrict or limit the amount of the tolls. " There is no doubt that the general principle

is favored both in law and in justice, that every man may fix what price he pleases upon his own property, or the use of it; but if, for a particular purpose, the public have a right to resort to his premises and make use of them, and he have a monopoly of them for that purpose, if he will take the benefit of that monopoly, he must, as an equivalent, perform the duty attached to it on reasonable terms." [1] And on the same principle may be regulated the charges and methods of hackney-coachmen and draymen who are allowed to establish their business in public streets, and whose privileges give them special opportunities for extortion.

There is, however, one class of corporations, that of common carriers,[2] which is regarded as specially fit for State regulation. This arises in part from their functions, and in part from the privileges conferred upon them by the State. Thus, in the case of railroads they are usually constructed and maintained by private capital, but they possess public functions which render them subject to State regu-

[1] Lord Eldon, as quoted in the Illinois Granger case.

[2] "A person is not a common carrier, who on a single occasion sends his servant to transport goods belonging to a particular individual, from one place to another. To constitute him a common carrier, he must be one who, as a regular business, undertakes for hire or reward to transport the goods of such as choose to employ him, from place to place. He is not a common carrier, unless his employment be to carry goods generally for any one, so as to imply a public engagement to serve all persons alike on being tendered a suitable reward. In other words, if he undertake for hire or reward to transport the goods of all persons, indifferently, that is, of all such persons as choose to employ him, from place to place, he is a common carrier; and his employment is of such a public character as obliges him to accept business whenever it is offered to him on reasonable terms."—Edwards on *Bailments*, § 495.

lation, apart from such regulations as the public safety requires. To secure safety the State may regulate the grade of the road and the manner of crossing other roads; it may prescribe the signals to be given at dangerous places; it may compel the road to fence in its tracks, and it may regulate the speed of trains. These belong to the police power of the State. But the nature of the functions performed by a railroad offers a further ground for control, because these functions are of a public character. The State recognizes this by exercising in favor of the roads the right of eminent domain, by which the necessary right of way may be secured even from non-assenting parties; and the State has also aided by capital and other means the construction and equipment of these roads, and has levied taxes for this purpose on localities which were opposed to the grant of such aid. The business of the country is absolutely dependent upon the agencies of transportation, and the corporations which hold these in their grasp are able to exert an immense power for good or evil, according to their fancy. In many cases there has been undoubted wrong committed by these corporations against the interests of individuals, and of communities through discriminations in freight charges. If one man can obtain privileges, by which his merchandise is transported at lower rates than that of his competitors, he has acquired an advantage which partakes of a

monopoly. And so of a community, if merchandise can be carried from New York to San Francisco for two and one half dollars, while four dollars is charged for transportation between New York and Salt Lake City (as was the case at one time), it is obvious that the latter place is unduly discriminated against. It cannot be denied that in this respect railroads have abused their powers, and also that by combining and "pooling" issues they have been able to exert an immense power, which has often been turned to corrupt practices and to enhancing their own power at the expense of the interests of the community. But this is only a natural result of the position originally adopted by the State toward the railroads. The importance of means of communication to the development of the trade and industry of the country was prominently kept before the people, and so far from imposing any restrictions which might hamper the construction of railroads, the Legislatures believed that they should be granted every advantage, and they even loaned the credit of the State liberally to aid such works. The future development of the railroad system was hardly dreamed of, and the charters granted were couched in the most favorable terms. But when the period of construction was closed by the completion of the Pacific Railroad, a period of combination followed, which was hastened by the act of Congress of July 15, 1866, authorizing railroad companies of one

State to connect their roads with the railroads of other States, so as to form continuous lines for transportation. The power of the corporations vastly increased, and the opinion is now prevalent that some control or regulation on the part of the State, by which freight discriminations, pooling, and ruinous competition among the roads may be lessened, and the roads confined to their proper and legitimate functions, by which the public interests may be served. This belief has found utterance in constitutional provisions which recognize the right of the State to exercise a control over the roads,[1] and in the creation of special boards of commissioners, which exist in nineteen States, and are clothed with such powers as are necessary to enforce the public functions of the roads. They may even establish the rates of transportation, but their powers may be exercised only within the State. As there are but few roads which lie wholly within one State, and as many are subject to regulation by two or more independent commissioners, Congress has been appealed to to exercise its power of regulating inter-State commerce, a power of which we have already made mention.

[1] The constitution of Colorado (1876) contains the following provision: "The right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the police powers of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State."—Art. xv, § 8.

A State may not create a monopoly, by which is meant some exclusive power to dispose of something of value, either generally, or for some definite time, or within certain limits, unless the public interests demand such an extreme use of its power. But merely because a business becomes a monopoly through some special privileges enjoyed, or through some special conditions, the State has no right to interfere, unless it may be shown that the public interests are injured or are in danger of suffering injury. And even when the State does interfere it must confine its control to such methods as will not do violence to the occupations regulated unless the public health or morals demand extreme measures. Any interference on the part of the State with individual enterprise in all lawful employments does injury to the public interests, and hence State regulation should be applied and exercised with caution. "It is safe to classify, in the following manner, the cases in which usage will warrant one in saying that private property, invested and managed for the benefit of the owners, is affected with a public interest [and therefore subject to regulation by the State]. (1) Where the business is one the following of which is not a matter of right, but is permitted by the State as a privilege or a franchise. Under this head would be ranged the business of setting up lotteries; of giving shows, etc.; of keeping billiard-tables for hire; and of selling intoxicating drinks,

when the sale, by unlicensed parties, is forbidden. Also, the case of toll-bridges, etc. (2) When the State, on public grounds, renders to the business special assistance by taxation or otherwise. (3) When for the accommodation of the business, some special use is allowed to be made of public property or of a public easement. (4) Where exclusive privileges are granted in consideration of some special return to be made to the public."[1] The limits of State interference are as difficult to determine as are the subjects of that interference, and no definite rules can be stated because the practice among States differs widely. It is a power which may be so employed as to accomplish much good and afford an efficient protection to public and private interests; but when made subservient to personal aims or to party interests, or when in any way turned aside from its proper functions, it creates greater evils than it was intended to remedy. And it will not be before the political "boss" and the ignorant demagogue cease to be a power in politics, that it will be safe to extend the regulating powers of State. As it is, with State supervision over banks, insurance companies, charitable institutions, and in many States, railroads, the amount of fraud, trickery, and corruption connected with it, clearly shows the danger that would accompany any extension of it, which was not carefully guarded against abuse.

[1] Judge Cooley in *Princeton Review*, March, 1878.

The State government also interferes in many respects with the individual freedom of the citizen, on the ground that such interference is for the welfare of the community. Thus, it maintains a system of common schools for educating the young, for in a republic an ignorant voter is a dangerous voter, and wherever ignorance is prevalent, pauperism and crime are also to be found; and as a moderate amount of knowledge tends to make the citizen law-abiding, the State undertakes to furnish facilities for securing that knowledge. The State assumes the care and maintenance of those who are by physical or moral infirmity unable to control their own actions, such as the insane and lunatics. There are also in every community some who are unable to successfully meet the struggle for existence, and who must either become subjects of State or private aid, or perish. Hence the State devotes money for various charitable purposes. The more these social problems are considered, the clearer is it seen that the causes of pauperism, of crime, and of insanity are in a great measure preventable causes, and that State agency, when properly directed, may lessen the activity of them. These various functions of the State government will be examined in order.

Education.

The national government has never directly maintained any general system of education in the coun-

try, but it has from time to time given liberally to State systems. Here, as in every civilized country, military and naval education is at the expense of the government. It has also established some Indian schools in different States, and since 1810 an annual appropriation has been made by Congress for educating the Indians. In 1865 when the Bureau of Refugees, Freedmen, and Abandoned Lands was organized, a part of its funds was devoted to educational purposes, and in 1867 a National Bureau of Education was formed, and made a part of the Interior Department. The functions of this Bureau, which still exists, are to collect statistics and facts showing the condition and progress of education in the States and territories, and to disseminate such information as will promote the cause of education throughout the country. But, generally speaking, public education has been regarded as pertaining to the State governments.

The national government has, however, always recognized the importance of this subject, and has aided liberally in the formation and maintenance of school systems, especially by grants of public lands. In the ordinance for governing the northwestern territory (1785), it was provided that "lot No. 16 of every township shall be reserved for the maintenance of public schools within said township," [1] a

[1] Dr. Johnson, of Kings (now Columbia) College, wrote in 1762, desiring that whenever grants for townships or villages were issued, a competent portion should be set apart for the support of religion and schools. And

grant that was equivalent to 640 acres, or one square mile of land, and this policy was in 1787 made perpetual. "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." (Art. 3.) The first grant in accordance with this act was made in 1802, and since that year, every new State on admission to the Union has received such grants of land to be devoted to the purposes of education, and no other purpose. In 1848, on the admission of Oregon as a State, two lots or sections in each township were reserved, making the grant 1,280 acres, and every State since admitted has received this amount. These lands have in some cases proved of little aid to education, having been disposed of in such a manner as to benefit individuals more than the State.[1]

In addition to these grants a further reservation was made of not more than two townships for the purpose of a university; and notwithstanding this limitation of extent, Ohio, Florida, Wisconsin, and Minnesota each obtained more than two townships for this purpose.[2] These lands are sold or leased

Georgia, in 1784, required that there should be laid out in each county 20,000 acres of land of the first quality, for the endowment of a collegiate seminary of learning. The provision contained in the ordinance of 1785, which was confirmed and made perpetual in 1787, may have been suggested by this example.

[1] In several of the States the lands were disposed of to the counties or townships; and in others no record of their disposition has been kept. In some of the States the lands in market were sacrificed at ruinous rates; large tracts in Missouri, for example, being sold for two cents, and even one cent, per acre.

[2] The total "university" grants have amounted to 1,165,520 acres.

by the State Legislature, and the proceeds devoted to education. While in some cases the fund has been managed so as to produce good results, in others it has been shamefully mismanaged. The State of Ohio, for example, so disposed of her three townships (69,120 acres) that they now contribute only $10,000 annually to the support of two universities, while the lands themselves have been rendered forever free from taxation.

In 1862 Congress made still further grants of land in aid of colleges for the cultivation of agricultural and mechanical sciences and arts. Thirty thousand acres of public lands were donated to each State for each Senator and Representative it was entitled to under the apportionment of 1860.[1] In some cases a separate institution was founded, aided by further endowments from the State or private individuals, or a new department was added to one of the existing institutions. In this connection should be mentioned the deposit with the States of $28,000,000 by the national government, at a time when it was practically out of debt and had a large surplus in the treasury. Some States used their portion as an educational fund, but others wasted theirs either through mismanagement or actual fraud. A national university to be established at Washington has often been proposed, but it has never been carried out.

[1] The total amount of land ceded under this law was 9,600,000 acres.

Among the States there is found early provision for educating the young. And this was especially the case among the New England States, while in the Southern States there existed an almost fatal dislike to common education. This difference was forcibly illustrated by the replies that were sent to the English Commissioners for Foreign Plantations by the governors of the respective provinces in answer to a question regarding the general condition of the settlements. "I thank God," replied the governor of Virginia, "there are no free schools or printing presses, and I hope we shall not have any these hundred years." The Governor of Connecticut wrote: "One-fourth of the annual revenue of the colony is laid out in maintaining free schools for the education of our children." In Massachusetts an act of 1647 required every town of 100 families to support a high school, whose teacher should be "able to instruct the youth so far that they may be fitted for the university," and the same policy is in existence to-day.

In the South, however, the value of a common education has never until recently been recognized, although there have always existed excellent higher institutions of learning.

Slavery formed a great obstacle to the creation of an educational system in the Southern States, and in fact wholly prevented the existence of free common schools, for there was no class to take advan-

tage of them. The slaves were kept in a state of profound ignorance, and it was made an illegal act to teach a slave. In North Carolina, as late as 1830, it was forbidden to teach a slave to read, under penalty of $200. In 1833, in South Carolina, a white person who taught a slave or a free person of color to read or write, was fined $100, and sentenced to six months' imprisonment ; a free person of color, guilty of the same crime, was fined $50, and received fifty strokes of the lash. This principle was recognized more or less throughout the Southern States, and was the cause of the great difference which even yet exists between the Northern and Southern systems of schools. It should in justice be added that the feeling against educating slaves was quite as strong in the North, and often produced riots and destruction of property.[1]

The importance of securing a well-adjusted school system, which shall be free to all, and shall be complete, has been recognized in nearly every State and territory in the Union. And in some form almost every State and territory has both general and local superintendence of its educational system. Thus, there is in a majority of the States an executive officer, the Superintendent of Public Education, who is either elected by popular vote, or is appointed by the governor (Georgia). The State government is not, however, the centre of

[1] See, for examples, II von Holst, "Constitutional and Political History of the United States," pp. 96–99.

action in educational matters. It interferes only so far as general school legislation is concerned, such, for instance, as relates to the manner of establishing the schools and of providing for their support; and thus the powers of the State are chiefly those of inspection and supervision. The organization and management of the schools are left to the care and control of the different localities, and the active school work is performed by local boards or superintendents. In some States there are State Boards of Education. In Iowa, for example, this board is composed of the lieutenant-governor and one member elected from each judicial district of the State. In Louisiana, it consists of a State superintendent of education, and one member to be appointed from each congressional district, and two from the State at large. The boards may be vested with very wide powers. The school system of Alabama was created by the constitution, and not by the Legislature; and the power to enact school-laws is taken from the latter and is given to the State Board of Education. In a decision by the Supreme Court of Alabama, it is said: "The new system has not only administrative, but full legislative powers as to all matters having reference to the common schools and the public educational interests of the State. It cannot be destroyed nor essentially changed by legislative authority."[1] This system, however, is an exceptional one.

[1] The General Assembly could repeal the laws passed by this board.

In nearly every State there are county supervisors or superintendents, who occupy a position between the town committees on the one hand, and the State system on the other.[1] The manner of selecting these county officers is different among the different States. In Illinois they are elected by the people[2]; in Florida a superintendent is appointed in each county by the governor; in Georgia he is elected by the county-boards; in Maryland he is appointed by the judges of circuit courts; and in Mississippi, by the State Board of Education. Besides these county officers there are other district (where school districts exist) or township educational officers. In Connecticut there are district committees, elected by the people, which form an administrative board over the school district. In Illinois there are three trustees elected in each township, and three district school commissioners elected in each district. In New York the town clerks perform some of the functions connected with educational interests that are in other States entrusted to county officers, and there are also elected in each school district, a trustee, a clerk, a collector, and a librarian. This district comprises a territory of about four square miles, and the number of such districts in the State

[1] In Connecticut they are known as town-school visitors; in Kentucky, as county-commissioners; in Louisiana, as division superintendents; and in Rhode Island, as school-committees. In Louisiana the parish board corresponds to the county boards in other States.

[2] In this State there are a State board for managing the university; county boards for a like charge of county normal schools; and school-district boards for districts where the growth of population, from the number or size of towns, imposes duties more onerous and responsible than can be well performed by the ordinary school directors.

is 11,000.[1] The organization in Michigan is so complex that it is given in its entirety. The officers are *a*, a State superintendent of instruction, elected by the people; *b*, a board of regents of the State university, elected by the people; *c*, a board of visitors of the State university, appointed by the State superintendent; *d*, a State board of education, consisting of three members chosen by the people and the superintendent; *e*, township boards, embracing (1) the supervisor, two justices of the peace, and the township clerk, for appeal; and (2) the township superintendent, clerk and school inspector, for administration; *f*, township superintendents of schools, elected by the people; and *g*, district boards, composed ordinarily of a moderator, a director, and an assessor, elected by popular vote.[2] The multiplicity of divisions and of officers is confusing; but the following is the order of the divisions, beginning with the largest: State, superintendent; county, commissioner, superintendent, etc.; township, visitors, trustees, etc.; and district, trustee, board, etc. Each set of officers is occupied with what pertains to the schools of its own territory.

In cities a somewhat different organization is re-

[1] In New York there is a Board of Regents, consisting of twenty-three members, nineteen being elected by a joint ballot of the two branches of the Legislature, and the remaining four being the governor, the lieutenant-governor, secretary of State, and superintendent of public instruction. The elected members hold office for life. The powers of the Board are numerous, but its chief function is to supervise the State university and the academies, which are preparatory schools for it.

[2] A synopsis of the laws in the different States establishing school systems will be found in the Report of the Commissioner of Education, for 1875.

quired. The schools are, in most of the cities, under the management of a Board of Education, which regulates all matters relating to schools. In New York City this board is composed of twenty-one commissioners of common schools, with five school trustees for each ward. The chief executive officer is, however, a superintendent. Boston has one superintendent and six assistant superintendents ; there are also forty-nine supervising principals, one in each grammar-school district. In New York there are one superintendent, and seven assistants; but the real work is in the hands of principals of the schools, of whom there are more than three hundred. Philadelphia has no superintendent, the principals of grammar schools acting as local managers. In St. Louis the supervising principals are required to instruct each day at least one class. Hardly two cities would show similar organizations, but they all agree in being separate from the general State system, and are practically self-governing.

The system of education afforded by the State is quite complete, and extends even to the higher branches of study, though here again there is a wide diversity among the States. In general the system includes the following : primary, intermediate, and high schools, a State university, and a number of normal schools, both State, county, and city, for training those who are to teach. This scheme is moderately complete, and if efficient,

would answer for most purposes.[1] In addition, there are also some technical and agricultural schools under State control; schools for unfortunates, as deaf-mutes, blind, etc.; and schools of discipline, as reform schools.[2] It has sometimes been contended that the State should not undertake to maintain high schools; or, if it does, the charge for maintenance should not be drawn from the taxpayers at large, but only from those who are in the locality of the school, or who enjoy the benefits it confers. The whole population, it is said, should not be taxed for schools which are used by comparatively few. And on this ground, as well as on the general inexpediency of the State's attempting to afford advanced education, attempts have been made to prove such schools illegal. And while the constitution of Nevada provides that "the legislature shall have power to establish different grades of schools, from the primary to the university,"[3] as late as 1873 a commission proposed to make that of New Jersey read: "the term 'free schools,' used in this constitution, shall be construed to mean schools that aim to give all a rudimentary

[1] "No system of public education is worthy the name, unless it creates a great educational ladder, with one end in the gutter and the other in the university."—Huxley.

[2] Reformatory schools began in this country in 1825, under the name of houses of refuge; later, institutions of this description were called reform-schools, and recently they have been established as industrial schools. In the best institutions of this kind the children are subject to family discipline, in preference to prison discipline, and are taught useful trades. Schools for orphans were first established in this country at Charleston, S. C., in 1790.

[3] Art. xi, § 5.

education, and not to include schools designed to fit or prepare pupils to enter college." The legality of high schools has, however, become established, and they are now an essential part of the State system of education.

Yet, notwithstanding the opportunities thus afforded to secure the advantages of an elementary education, the fact remains that they are not made use of, and that there is a larger proportion of illiteracy among the people than would be expected. This may, in part, be explained by the large number of foreigners who come to this country to settle, and who belong for the most part to the lower and poorer classes of society. But even among the native population the ignorance is such as to have attracted the notice of philanthropists and legislators, and measures have been taken to compel the school attendance of the young by the passage of compulsory education laws, and by the appointment of a local officer, whose duty is to see that all children of certain ages in his district shall attend some school for a definite period each year, and to punish as truants those who do not attend. Thus, in Connecticut the law provides "that every parent, guardian, or other person having control and charge of any child between the ages of eight and fourteen years shall cause such child to attend some public or private day school, at least three months in each year, six weeks at least of which attendance shall be

consecutive, or to be instructed at home at least three months in each year in the branches of education required to be taught in the public schools, unless the physical or mental condition of the child is such as to render such attendance inexpedient or impracticable." It is still doubtful if such enactments accomplish the object they seek to attain ; but as in 1879 twelve States and three territories had passed such laws, and four have embodied the principle in their constitutions, they show that the State recognizes that the educated citizen is a law-abiding citizen, and therefore is willing to attempt a compulsory attendance on the schools. Whether such attempts are of real service to the community is still an unsettled question.

These schools are supported mainly by taxation. In some States a special tax, as a poll or capitation tax, is imposed for this purpose, but the State school-tax forms the chief contribution by the State. There is also in each State a school-fund which is generally based upon the proceeds of the sales of lands granted to the State by the United States, or by individuals. In Florida the fund is increased by the proceeds of all property that may accrue to the State by escheat or forfeiture, or of property that has been granted to the State for no specific purpose ; all moneys that may be paid for exemption from military duty, and all fines collected under the penal laws of the State ; and twenty-five per cent. of the sales of the public

lands owned by the State. Some of these sources of income are made use of in other States, but the composition of the fund is not uniform. Where the fund has been well managed it has become very large, as in Connecticut, where it amounted in 1872 to $2,044,190; in Massachusetts it is as large, and in New York it is about $3,080,000, from which an annual income of $170,000 is derived; in Indiana it is nearly $9,000,000. In Pennsylvania there is no permanent school-fund, but the State makes a large annual appropriation for the support of the schools. Where the fund has been mismanaged, it yields but little to aid education.[1] The income derived from this school-fund is annually apportioned among the counties or districts, the number of school-children in the county or district being taken as the basis of apportionment.

Notwithstanding the liberality with which the State grants direct assistance to the schools, the larger part of public-school income is derived from local taxation, that is, taxes laid for the support of schools on the inhabitants of the county, district, city, or township in which the school stands. The county is usually taken as the basis for taxation. In 1872 in New York State the amount apportioned by the State among the districts was $2,659,000; but the amount raised by tax was $7,281,000. Receipts from other sources raised the total income for school purposes

[1] In 1875 the total permanent school-fund of 28 States and 3 territories amounted to $81,800,000.

in that year to $11,500,000. The proportion between State and local contributions differs among the States, but in every instance local taxation forms the more important source of income.[1]

The results of this liberal policy are too evident to require extended notice. Originating in New England, wherever that class have emigrated they have taken with them the common-school system. Apart from the benefits to be derived by the individual, by the State, or community from a liberal education, the common schools have fostered a national feeling. For years, on the average, hundreds of thousands of immigrants have landed on our shores, and joined the native population. They are for the most part illiterate, and strongly imbued with national spirit and prejudices ; and they have but one common desire, that of improving their condition. Yet they have been absorbed into and assimilated to our population, and after one or two generations their prejudices and old national feeling vanish, and they become a part of the native population, recognizing this as their country, and its interests as their interests. The great agent for working this transformation is the common-school system.

Charitable Institutions.

The matter of relieving the poor and distressed by

[1] The total income in 37 States and 8 territories for school purposes was in 1875, $87,500,000.

public aid is one of the most intricate and perplexing problems connected with State agency ; because the means employed have oftener resulted in increasing pauperism than in decreasing it. Poverty is a necessary evil, and in the existing constitution of society a large part of the community must live by their daily labor, and be in constant danger of becoming unable to support themselves. All the well-directed efforts of charity and legislation can only alleviate and not destroy poverty. But pauperism is preventable. Many towns and counties are wholly free of a pauper class, and it becomes most noticeable where there is a large foreign element in the population, and in crowded cities where the struggle for existence is most severe.

An important truth should however be recognized at the outset ; and it is the more necessary to state it, because the sight of a fellow-man in distress excites pity, and charity is then apt to be governed by feeling and impulse rather than by sober thought. No man has a *right* to claim support of the State. Were this a right, and did the idea become common, that the community is bound to support whoever applies for aid, the result might easily be foreseen. Pauperism would greatly increase, the spirit of independence would be weakened, and the able-bodied laborer would be tempted to rely upon charity for his subsistence. Even if certain conditions were required of those applying for relief, the

latter might of his own choice hasten the crisis which would entitle him to a share of the aid. For these reasons the condition of a pauper should be somewhat less eligible than that of the independent laborer; for were it better, it would only act as a premium on idleness by tempting the poor to avail themselves of it.[1]

The result of indiscriminate charity was illustrated by what happened in the city of New York in 1873 on the opening of free soup kitchens and lodging-houses, which were supported by public and private subscriptions. As these institutions were widely advertised the vagrants and paupers flocked to New York from the surrounding districts, coming even from Pittsburgh and Boston, to obtain this free support. The streets of the city swarmed with this needy crowd; crime and disorder increased; and the lodging-houses became nuisances and dens of vice, and many being so disreputable as to necessi-

[1] Report [to the British Parliament] on the Poor-Law, 1839, p. 45. A recent writer on poor-relief thus summarizes the dangers attending State charity:

"1. The knowledge that the necessaries of life can be had for the asking naturally induces men who are not really destitute to throw themselves upon the State for aid. Hence State relief inevitably promotes idleness, with its kindred vices. 2. The same knowledge induces men to look forward to being supported by State relief whenever the time shall come that they are really destitute; whence comes dependence, with all the faults that follow in its train. 3. The same knowledge quenches the natural sentiment of the human heart towards relatives or friends, the care of whom is thrown off upon the law in place of those to whom it properly belongs. Hence inhumanity and selfishness. 4. The provision of State relief, especially if the true principles of social or political economy are not understood, leads to interference with the natural course of trade and employment, besides benefiting particular interests or localities (generally those who least need it) at the expense of poorer or weaker neighbors."—Fowle, "The Poor-Law," p. 15.

tate their closing. The offer of free subsistence and free lodging acted as a premium on idleness and improvidence as compared with industry and thrift; and this influence was so demoralizing that those who were formerly steady laborers, now applied for relief. Families would take their meals of the Relief Association, and spend their wages in drink, so that in the poorest quarters the liquor trade was never so prosperous. Mechanics and artisans stooped to public alms, although at the same time they contributed money to various strikes and labor unions; and notwithstanding the great depression in industry wages did not fall, because by receiving public alms the laborers were enabled to hold out against their employers.

For convenience, charitable and correctional institutions will be treated of together, for it is difficult to separate them, the objects of some institutions partaking of the character of both. Persons who require relief or discipline may be classed as follows: *a*, paupers; *b*, vagabonds; and *c*, persons convicted of crimes. *Paupers* are such as are in need of the necessities of life, and may be forced to ask aid or support by circumstances beyond their control, or by their idle and vicious habits. They also include the children of paupers, and the pauper insane, as well as those who are by sickness or other accident temporarily thrown upon the State for support. *Vagabonds* are those who wander abroad without

any visible means of support, who pass from town to town, lodging in out-houses or jails, and subsisting by charity. Persons convicted of crime, are, first, adult persons convicted of high crimes, and imprisoned in the State prison for a definite period; and secondly, juvenile offenders.[1]

The Federal government does not dispense charity save in emergencies, where the distress may occur in districts where the means of relieving it are insufficient. Thus, in the floods of February, 1882, caused by the overflow of the Mississippi River, when upward of thirty counties in the cotton-raising region of the Southwest were submerged, the government very properly undertook to relieve the distress, for it possessed the means at hand, and no delay was caused through a failure of efficient instruments. The expense of affording relief in such a crisis falling on the resources of a single State, drawing its revenues from a limited extent of territory; whose population was chiefly agricultural, and which consequently possessed little ready wealth; and whose territory was in part submerged, and hence rendered for the time useless, would only have crippled the State finances, and perhaps resulted in permanent disadvantage to the State. For the central government to intervene was, therefore, a proper exercise of its agency. But apart from such exceptional circumstances the Federal government

[1] This division is substantially that given in the Report of the Massachusetts Board of State Charity, 1871.

has but little to do with poor-relief, except so far as it may support charitable institutions in the District of Columbia.

In every State there is a more or less elaborate system for maintaining paupers, and, as a rule, it is made a function of the local governments. The basis of the State systems is the "law of settlement." A settlement may be gained by birth, residence, marriage, or service, and entitles one to public support in the town or county where the settlement is acquired. Thus, each town or county supports its own poor, and if a pauper applies for relief in a town where he has not gained a settlement, the authorities may return him to the place of his origin, or where he has acquired a settlement. Among the New England States poor-support is furnished by the selectmen of the several towns to all needy persons having a settlement within their limits.[1] Among the Southern and some of the Western States, poor-support is furnished at the expense of the county, and the Court of County Commissioners is empowered to dispense this support. In Maryland and Delaware the officers are different, but the principle is the same. In New York and other States the poor-relief is divided between the town and the county. Paupers who have no settlement are supported by the State.

In what follows we have, for convenience, taken

[1] In New Hampshire the county assumes the care of the poor.

the system of relief practised in Massachusetts,[1] for from the economic position of the State and the consequent influence on its people, the question has received a more careful and systematic study than in any other State.

Under the law of settlement the poor are distributed throughout the State, each town supporting its own poor, and are not collected into a few large institutions, except so far as they may be State paupers. That this system tends to decrease pauperism cannot be doubted. The poor are confined as far as possible to the district in which they reside, and where their circumstances and general conduct are known. Hence there is every reason to believe that the aid is distributed with greater discrimination than where the recipients were collected from various parts of the State and lodged in a few large establishments, little or nothing being known of their previous history. It is even well to allow State aid to be distributed by local authorities, and as greater care and vigilance may be exercised on account of the more accurate knowledge of the causes which led to the application for aid, the waste of money will be less. Another benefit of local aid is the freedom from a tendency to form a pauperized class. In a large institution where the worthy, vicious, and idle poor are congregated and daily come in contact, the result is

[1] I am indebted to Mr. F. B. Sanborn for much material relating to this admirable system, which owes much to his able management.

to form a permanent pauper class.[1] In the town, however, those who are in need of temporary relief may be distinguished from those who are hopeless paupers, and may be so treated as to render the period of their dependence as short as possible. In the attainment of this object *in-door* and *out-door* relief have been separated. By *in-door* relief is meant that which is dispensed in almshouses or other public institutions; *out-door* relief is given at the door of the recipient, and is intended to be confined to cases of temporary disability—such as sickness, or accident.

A distinction is always made between the worthy poor, who are forced to ask aid through no fault of their own, and the idle or vicious poor, who are indisposed to work, and prefer to beg. Formerly the respectable and criminal poor were confined together in one institution, but it was seen that so far from reforming the criminals, their influence infected those with whom they came in contact. A very necessary reform was accomplished when a classification of paupers was made. For the first the treatment is wholly charitable. Food, clothing, and lodging are

[1] Of the aggregation of paupers a report of the New York Board of State Charities says: "These are evils of a moral nature, destructive to the moral sense of the individual, and highly injurious to the welfare of society. Here the innocent are mingled with the vicious; young and simple-hearted with their callous and corrupt elders; the sexes mingle indiscriminately by day and often by night. Here, crowded together in a single room, or in an open yard, are the diseased, the drunken, and the corrupt, found associating with those whose character is not yet lost, but who are simply destitute through misfortune, or the accident of birth. The vile here encourage each other in villainy; the sense of decency is obliterated from those who at their entrance had some feeling of self-respect."

furnished in almshouses during their lives, and a burial after death. But for the second class the treatment is correctional or reformatory [1]; and such poor are obliged to labor in workhouses, and thus in a measure earn their support. The inmates of workhouses may even be hired out in service, the State receiving their wages, and in some cases supporting them. In such instances, however, the supervision of the State is not broken.

Another important division of the Massachusetts system of State charity is that which comprises the care of pauper children.[2] The problem presented by these children was a difficult one. From their circumstances they tended to become either confirmed paupers, and as such a continual charge to the State; or from their training and associations

[1] The first reformatories or like institution found in America were established under municipal and private patronage. The New York House of Refuge, the first public reformatory on a large scale, was opened in 1825. The Supreme Court of Illinois has decided that the act creating the Reform School was unconstitutional, and that the act, so far as it restrained liberty for any cause except actual crime, was in violation of the Bill of Rights. People *vs.* Turner, 10 Am. Law Reg. (N. S.) 366.

[2] This is made a function of the State, but the city or town in which girls and boys committed to the reformatories have their "legal settlement," is required to pay fifty cents a week for their support, and may recover the same of the parent, kindred, or guardian liable to maintain them. This is the Massachusetts system. In Indiana, the parent, when procuring the commitment, unless for good cause relieved, pays the entire cost. In New Jersey, the committing magistrate may determine what the parent shall pay. In Maine, cities and towns pay one dollar per week when a boy is committted for truancy, or larceny for a less amount than one dollar, and nothing when he is committed for any greater offence; but there is no claim against the parent. In Ohio, the parent, when making the complaint, is charged $1.50 per week for the child's board, but nothing when he does not make the complaint. No right to recover of the county, city, or town is given. In Connecticut, there is no liability either of municipalities or of parents to contribute for the support of children in reformatories.

they tended to join the criminal class, and as such become dangerous to the community. Many of them are not even wayward, much less criminal, but merely suffering from neglect. The question was how could these children be reclaimed and made useful members of society. It would not aid them to place them in almshouses, where they would be continually in contact with paupers, and see nothing but a pauperized class; nor should they be committed to prisons, for the influences which would there surround them would be any but healthful. And, in addition, many of them commit crime from example or necessity, without a true sense of the wrongfulness of their conduct. If the almshouses and the prisons were to be closed against young criminals, vagrants, and paupers, obviously a new class of institutions must be created, and this was accomplished by founding State reform schools. To these such young are consigned, and are here taught some trade,[1] and are surrounded by healthy and normal influences which will lead them from the vicious beginnings which are too often due to the

[1] It is a difficult question to decide to what extent this reformatory discipline by means of education may be carried. The importance of this instrument is such that it cannot be eliminated from a reformatory system, but it should not be carried to the same extent as in public schools or academies. "The position may safely be taken that in the case of vicious boys and girls who have passed beyond the restraints of their families and communities, and whom the State is required to take the charge of, they should not be educated beyond the point which the average children of their rank in life attain. They should not be so educated that, if boys, they will feel above being employed as day laborers or mechanics; or, if girls, that they will feel above working at service in families."—Report Mass. State Board of Charities, 1873, p. 76.

associations with which they are thrown. The State, regarding them as wards, deems it right to use the opportunity afforded by detention to improve their moral natures.

In furtherance of this object these wards may be indentured or placed out by tne State. This is accomplished by placing the child in the care of a person who binds himself to feed and clothe him, teach him an occupation, and perhaps provide him with a certain sum of money upon reaching his majority. In return the child thus indentured gives his labor. In the early days of poor-relief it was customary to support the paupers by contract in private families, and also cases are met with where the poor were sold for a stated period "at public vendue to the highest bidder"; the person contracting for their maintenance being at all expense for clothing, medical attendance, funeral charges in case of death, etc., and contracting to deliver the paupers up at the close of the time well clad. This course was adopted both for adult and young paupers; but as no supervision was maintained over the performance of the contract, it was often broken, and the system resulted in a species of legalized slavery. The sole object of the hirer was to get out of the pauper as much work at as little expense as possible, a feeling that was met on the part of the pauper by a determination to do as little work, and get as much as he could. In Massachusetts,

however, the State, through a visiting agent, exercises supervision over such wards as may be indentured out, and may, where cruelty, ill-treatment, or neglect is proved, cancel the contract, and take the ward again in its charge. The young are placed in families where they may be surrounded by proper influences, and are assured of good treatment. Nor does the action of the visiting agency end with this duty. Its other functions are to find proper places for these children, and of attending the trial of children under sixteen years of age, and if in his opinion the welfare of the child will be better promoted by placing him in a good family than by committing him to a prison or other reformatory, he may take charge of the child and place him in such a family.

A vagrant is a professional beggar, one who prefers a vagabond and mendicant life to steady labor. On the complaint of any person such a vagrant shall be taken before a justice, and if it be determined that he is a vagrant within the meaning of the law, he is committed to the poor- or almshouse for a period not exceeding six months ; or, if a hardened offender, to a house of correction or jail, not exceeding sixty days ; and he may be kept on bread and water only for one half the term for which he is committed. In Massachusetts they are sent to the workhouse, and even in the towns may be made to work for their

support.[1] Children, who are found begging, may be sent to a reform school.

The State also provides means of relieving in their own houses the sick poor, and of maintaining those who are temporarily unable to support themselves. This system of relief, which is called *out-door* relief as distinguished from *in-door* relief, where the poor are collected into State institutions, has much to recommend it, for it does not tend to create chronic pauperism. But it can be applied only in certain cases, and would not be suitable to those who have really become chronic paupers. In New York City out-door relief is distributed or controlled (*a*) by the State acting through the State Board of Charities; (*b*) by the city through the Commissioners of Charities and Corrections, by the police, and by certain institutions and asylums under private management, but which are mainly supported by public funds, granted under special laws; and (*c*) by the dispensaries and similar medical charities.

The pauper insane also require some attention on the part of the State. If it were asked why the State should treat insanity rather than any other disease the reply would doubtless be, on account of humanity and the general ignorance on the disease. Moreover, when an adult loses his reason he lapses into a condition of dependence, and is then a fit subject

[1] "Such, however, is the extreme humanity of the Massachusetts law that some towns send the tramps to a hotel, and pay for meals and lodging for a night."—Brace.

for State guardianship. The State does support institutions for treating the insane, to which patients may be consigned on application of friends, judges, or governors, and on the certificate of two reputable physicians.[1] We have no space to describe the change that has gradually been made in the treatment of these unfortunates. Formerly confinement, medication, severe restraints, and solitude, combined with cold, dampness, and generally unhealthy surroundings, were common to the insane asylums. But such a treatment only intensified the disease, and it need not be a cause for regret if the tendency is to go to the other extreme,[2] for on the whole a more exact and efficient treatment has been secured, though much yet remains to be done. In California,

[1] The laws in many States respecting the confinement of the insane are very defective, and are sometimes taken advantage of by those who have interested motives in getting rid of a person.

[2] A report was recently presented to the New York State Legislature on the subject of insane asylums, which contains some interesting figures: It is thought that in this State there are, in asylums and out of asylums, not far from 13,000 lunatics in a population of 5,000,000, or one to every 384 of the population. The increase of insanity is more rapid than that of population, especially among the poor. It is becoming more and more incurable. The number of mildly, moderately insane is increasing, and so is the percentage of functional nervous disorders that do not belong to insanity proper and yet are allied to it. The committee hold that we are very far behind Great Britain in our treatment of insane patients. The results of experience, with us, have not been properly systematized and organized. We are behind Europe in not having a Central Supervising Lunacy Commission. Our asylums are too expensive, and there is too much of the palace and the hotel, and too little of the home and the hospital, about them. Too little opportunity is given to the patients to labor. In the opinion of the committee central State supervision would aid much in getting officers and attendants out of the rut which long-continued habit and service have formed, and would tend to allay the distrust felt by the people. The mechanical restraints now in vogue in our asylums can safely be dispensed with. At least $2,000,000 might have been saved to the State in the last twenty years had there been intelligent supervision. It is unwise to establish small local asylums.

Wisconsin, Illinois, Indiana, and Ohio the entire expense of supporting the insane is borne by the State; in Michigan, Georgia, Pennsylvania, New York, and New Jersey it is divided between the State, the county where the patient has a settlement, and the relatives where they are able to contribute.

There are a number of other institutions aided or supported by the State, such as those for maintaining and educating the blind, the idiotic, and the deaf and dumb; but these classes bear so small a proportion to the total population that two or three large institutions will contain all of each class, and there is no necessity for local institutions.

In the cities where pauperism chiefly exists, the instruments for relieving it are largely increased in number, and are supported in whole or in part by the city, county, or State government, or by private charitable associations.

The chief function of these institutions is to relieve the needy, and there is very little of a correctional character to them. A more complete and systematic system of relief is necessary, and in this respect there is much room for improvement in the existing organization of city charity. While the State system, as carried out in Massachusetts, is tending more and more to provide an efficient and equitable relief system, the indiscriminate charity that may be obtained of city and of private institutions does much to neutralize the good effects that might fol-

low a rigid application of the principles of the State system. The difficulties to be encountered are so many and so formidable, that little has been done to check this evil, but attempts are now being made in New York to accomplish some reform in this particular.[1]

The State also affords aid to a large number of voluntary societies and corporations, which are under their own trustees or managers, and are subject only to a general supervision by the State authorities. The power of granting public money to such institutions has often been abused, the grants being made for political or party reasons, or obtained by corrupt means. Yet when confined within proper limits they accomplish good by aiding private charity to provide more efficient relief for a crowded district than could be done by State agency alone.[2] "The system [of public relief] in use has already passed from municipal relief without State supervision to mixed local and State relief, and now tends toward municipal relief supplemented and supervised by the State. In the opinion of those qualified to judge, this method is that which must ultimately be adopted in order to reduce pauperism to its lowest terms." [3]

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[1] See an article by E. V. Smalley in *The Century*.

[2] "The State should not grant aid to societies whose main object is the education or reformation of children. The State has a system of its own for both purposes—its common schools for the education of children, and its reformatories for their reformation. Nor should the State grant aid to societies organized for any charitable or reformatory purpose which are administered by one religious sect exclusively."—Pierce.

[3] Message of Gov. of Mass., 1877.

In 1875 there were eight State boards or commissions charged with the general oversight of charitable work in the States where they exist. In some cases their control is absolute ; in others their functions are partly administrative, and partly visitorial.

We are now come to that class of institutions which are wholly correctional in their character, and which form a very important adjunct to the protective system of the State. In 1870 there were in the United States 41 State prisons, 2,000 county jails, for the purposes of detention and imprisonment of persons convicted of minor offences, besides those institutions which are in part educational, such as houses of correction, penitentiaries, and workhouses, which existed chiefly in New York and Massachusetts. In addition to these is a further class of prisons in cities and large towns, namely, station-houses and lock-ups. Some of these not only undertake to punish crime, but also to prevent crime by reforming the criminal ; others are mainly for punishment, and these will engage our attention.[1]

It is obvious that the policy which is best for the governing of paupers, insane and vicious, that of separating and not bringing them together in large numbers into a few institutions, is not suited to the treatment of the really criminal class. The facility

[1] "All legislation which stops with the punishment of crime, and does not aim to prevent it, is incomplete."—Beccaria.

for supervision, security against escape, and general economy of management, are best attained by congregating them in prisons, but to counteract the evil effects of such aggregation, the prisoners are carefully separated, not from everybody, but from one another. There is thus little or no contact among the prisoners themselves, and few of those results which followed the indiscriminate mixing of criminals, the idleness and free communication of the old system, are to be feared. But the prison is never regarded as existing for punishment only; and a criminal is one who may, if not entirely, be cured of his criminal propensities, at least be made a better man. It is useless to deny that the severe and cruel methods that formerly prevailed in the treatment of criminals were not calculated to produce the effect that should be looked for from a well-adjusted prison system. The more carefully are the phases of crime studied the more clearly is it perceived that it depends, first, upon the person, who is more or less deprived of the moral sense; and secondly, upon his associations and surroundings. A moral disease cannot be remedied by fear or vengeance, and severe punishments tend to brutalize a nature that has already a bent toward crime. So that the opinion is daily gaining ground that the criminal is very different in a moral sense from other men, but it is a difference which may by proper treatment be wholly or in part obliterated.

It is difficult to describe the prison systems of the States, for they are very different both in administration and in their theory of prison discipline. Except some prisons in the territories the Federal government has nothing to do with prison administration, and even convicts from the United States courts in the territories are consigned to State institutions. Moreover, although there may be one central institution in the State under the complete control of the State, yet, as a rule, each county and each city manages its own prison ; and even where a county possesses more than one prison they may be under distinct officers or boards of management. Of late years the disadvantages attending such arrangement have received attention, and some States have created central boards for the inspection or control of prisons, or both ; and to the functions of such boards have generally been joined the supervision of charitable institutions. In New York State, however, the board of charities has nothing to do with the prisons ; and the three large prisons of the State are under the control of those inspectors who are elected by the people.[1]

Each county is supposed to maintain a prison, which is under the care of the sheriff, and it is believed that this requirement is usually fulfilled. The county jail was established for the detention of criminals, when the means of transferring them long

[1] There is in addition a private society, the Prison Association, which inspects the prisons and reports annually to the Legislature.

distances to central prisons were few and dangerous. Their chief uses at present are for the detention of the accused and condemned witnesses held for examination, and for the lodgings of tramps. It is notorious that the condition of these county jails in New York is such as to demand a radical reform, and it is probable that they but represent the general condition of these jails in other States.[1] The construction is faulty, and is based on old ideas when strict confinement and cruel punishments were believed to be the only means of dealing with criminals; there is no attempt to discriminate among the inmates, and there is no labor given to the wrong-doer with which he may occupy his time. He is brought into contact with his kind, and is forced to be idle—conditions which do little toward reforming an offender.

In the larger State prisons it is different, and in these many advances have been made toward an intelligent treatment of criminals. Each State, with the exception of Delaware and Florida, maintains a

[1] The following extracts are taken at random from reports by competent observers on the condition of these prisons:

"The gaols are crowded to excess; two, and sometimes three persons are put into a single cell, and a corridor, not large enough to accommodate half-a-dozen, is the living and eating room of a score of prisoners" (*Michigan*). "The sane are not separated from the insane; the guilty are not separated from the innocent; the suspected are not separated from the convicted. Hardened criminals and children are thrown together; the sexes are not always separated from each other. The effect of this promiscuous herding together is to make the county prison a school of vice. * * * The prisoners in nearly every instance are absolutely without employment for mind or body" (*Illinois*). "The common jails and their inmates are in a deplorable condition, and are literally the common schools of crime and vice" (*New York*).

State prison, and exercises complete control over it. The treatment is twofold, one looking toward the punishment and the other toward the reformation of the criminal. Under the former are included solitude, silence, hard fare, and constant labor; while the reformatory agents are instruction, industrial training, and special inducements which are sometimes held out to the convict. Such, for instance, are the "commutation laws," which are found in some of the States. Under these the criminal may by good behavior shorten his term of sentence. For example, since 1877, the managers of the Elmira (N. Y.) Reformatory have authority to discharge any convict who shows signs of reform; but previous to such final discharge he is allowed to find employment outside the walls of the reformatory on condition that he avoid the company of thieves, and report monthly, by letter or otherwise, to the managers. If his conduct proves that he is leading an industrious and honest life, he receives a full discharge. In Massachusetts a somewhat similar system is in operation. An officer is charged with the selection of suitable cases, and with the consent of the judge, the offender selected is placed "on probation," or in other words allowed "conditional liberation" on promising to work, to avoid evil associates, to repay the cost of his trial, and to report to the probation officer from time to time. In New York this system is aided by indeterminate

sentences of imprisonment, that is, no definite term of confinement is fixed by the judge, as it is intended to leave it wholly to the managers; in Massachusetts sentence is suspended, and the offender is thus saved from prison contamination, and the State is saved the costs of imprisonment.

For a number of years there was a fierce controversy as to the merits of the systems of prison discipline, known as the *separate* and the *congregate*. The former, which consists in a strict confinement of convicts in cells both day and night without contact with any fellow-convict, and with no occupation, was introduced in Pennsylvania, and was also attempted in some other States. But the cruelty of such a system, and its almost complete want of a reforming influence on the criminal, have gradually led to its being superseded by the *congregate* system, in which the convicts are confined in cells only at night or for insubordination; they are allowed to labor, often in large numbers, in the same room, and even converse with one another.

"A strong feature of the American State prisons has always been the amount of productive labor performed in them. Several of them, especially in New England, are self-sustaining, and even return a small revenue to the State in excess of the cost of maintaining the prison and paying all its expenses. None of the largest prisons, however, except that of Ohio, are thus self-sustaining; and it may be

laid down as a rule that beyond a maximum of five or six hundred prisoners, it is difficult to employ them so that their labor will repay the cost of their support. * * * Although we do not regard the revenue derived from the labor of convicts as of much importance, compared with their judicious treatment and their moral improvement, it still seems proper to note the facts that prisons of moderate size can readily be made self-sustaining, while the larger ones cannot."—(*F. B. Sanborn.*)

The existing prison system is a comparatively recent one, and the steps taken to lead up to it in New York State may be taken as an example of its history in other States. In the colonies thieves and other offenders were punished by whippings at the whipping-post or at the cart's tail, by branding on the cheek or hand with a hot iron, by exposure in the pillory or stocks, and by cropping off the ears, these punishments being generally accompanied by a term of imprisonment in the county jail. In time, however, the greater number of these punishments were abolished, but it was not until 1796 that the State prison was established in New York, and measures were taken to introduce radical reforms in the existing methods of treating crime. Before that year no less than eleven crimes were punishable by death; but the number was then reduced to two (murder and treason), and all other felonies were to be punished by a term in the State prison not ex-

ceeding fourteen years, either at hard labor or in solitude, or both. This, however, was but one step in the right direction. It was believed that industry alone would reform the criminal, and no pains were taken to keep the convicts separated, of instructing them, or of supplying them with adequate motives to good conduct. In 1816 an attempt was made to reform some of the existing evils, and the prison at Auburn was established; but these reforms, conceived in a spirit far in advance of the age, do not appear to have been carried out.[1] Two years later the insane were removed from the prisons and consigned to asylums designed for treating them. In 1821 the Legislature authorized the hiring of the services of prisoners to contractors, a measure which was accompanied by an attempt to grade prisoners according to their offences. The first class was to comprise the oldest and most heinous offenders, who were to be kept entirely separate from the rest, and be confined both day and night in solitary cells; the second class was to be confined for three days in the week in solitary cells, and for three days in silent associated labor; the third class was to consist of the younger and less hardened class of offenders, who were to be confined at night in separate cells, but

[1] Among other provisions this law provided that as long as the prisoner behaved in an exemplary manner, twenty per cent. of his earnings were to be set apart for his benefit, and invested in United States stocks. The amount so set apart was to be paid to him on his discharge. If sentenced for a term of five years or over he could by good conduct shorten his imprisonment one fourth.

who were to be employed in silent associated labor every day in the week except Sundays. Notwithstanding these measures, which were tending to a true conception of prison discipline, there was a great amount of cruelty and corruption among the prisons. The Legislature frequently took notice of these evils, but did not in any way check them. In 1828 the prison at Sing Sing was completed, but not until 1835 was any prison for women erected, although the care of female convicts had presented a perplexing problem for more than ten years before that time. Yet little change was introduced in the existing discipline, and the efforts of the Legislature appear to have been exerted in appeasing the outcry against prison labor, which seems to have resulted in the founding of a prison at Dannemora [1] for the purpose of employing the labor of the convicts in the mining and manufacture of iron. In 1847 the supervision of inspectors was established, and no important measure of prison legislation was adopted until 1863. This last law contains the important provision that entire good conduct on the part of the prisoner shall earn a remission of one month for each year during the first two years; two months on each succeeding year until the fifth year; three months on each following year until the tenth year; and four months on each succeeding year of the term. Since that time there has been a gradual im-

[1] This prison was constructed by convict labor.

provement in the treatment of crime, based upon a more accurate knowledge of its causes and of its character; and the last and, according to many, the most important step was the adoption of the indeterminate sentences already mentioned, in which the duration of imprisonment is fixed by the prisoner himself. Yet much remains to be done toward caring for criminals, and all the regulations of the law and the efforts of public and private charity can only mitigate those influences which lead or compel to crime. The subject of charities and correction is one of those perplexing questions of State agency which seem to baffle all attempts to solve them; and for some time yet to come it will remain an unsolved problem, until the moral diseases of man are better understood and are brought more under the control of well-applied remedies.[1]

Intimately connected with the subject of prisons is that of "convict labor," and it has at times assumed an importance which it does not merit. That the convict should be compelled to do some kind of useful work, both for his own good and for the benefit of the State, is admitted; and it is also admitted that he should be made to support himself so far as is possible, and not remain a charge on the State. But it is claimed that convict labor comes into competition with honest labor, and therefore, about elec-

[1] We have no space to speak of the admirable "mark system" which Sir Walter Crofton has introduced into Great Britain, and must only refer to Mary Carpenter's work on the subject [1872].

tion time, there is a great outcry against this system. It will be well to examine into the merits of the question.

There are three systems of employing convicts. (1) The *contract system* is practised in nearly all Northern prisons. The labor of prisoners is sold to the highest bidder, and is employed within the prison walls under his control. Under this system, which looks chiefly to pecuniary results, the contractor secures the greater share of the profits; the prison discipline is in great part destroyed, and the effect on the prisoners is bad. (2) The *lessee system* is found in some of the Southern States, and in it the labor is hired to a party for a stipulated sum each year; the lessee to feed, clothe, discipline, care for, and maintain the convicts. Report has it that the misery of these convicts is extreme, for they are wholly under the control of the lessee and are subject to his avarice. (3) In the *public-account system* the officers of the prison purchase raw materials, manufacture goods, and sell them in the market, the same as any manufacturing establishment. This last system is the one that has the largest number of supporters.[1] It is, however, difficult to decide which of the two systems, the contract or the public-account system, is the better. In the former, the State assumes no risk and the convict derives

[1] The Prison Reform Association [N. Y.] favors the public-account system; the Massachusetts State Board of Labor favors the contract system. The reasons for these beliefs will be found in the respective reports of these bodies.

no benefit; in the latter, the State invests capital in a manufacturing operation, and hence runs the risk of losing it, but it retains full control over the convict, and may give him such advantages as will shorten his term of imprisonment on account of good behavior, good workmanship, or other reasons, or may make him independent by giving him a share of his earnings.

The charge that convict labor comes into such competition with honest labor as seriously to injure the latter cannot be maintained, for the number of convicts so employed bears but a very small proportion to the total number of laborers in the country, and it is the same with the value of the products of the two classes of laborers.[1] It is true that the contractor pays for convict labor but from forty to seventy cents per day, for what costs outside of the prison, say one dollar and a half per day. Yet the number of laboring convicts is comparatively small, and unless it is all engaged in the same industry, does not produce sufficient to materially affect the outside markets, notwithstanding the difference in the cost of the labor as measured in money. It has been held that convicts should be employed in the construction of public works; in supplying, as far as may be, their own wants, without selling the products of their labor[2]; or, in severe labor, such as

[1] See the reports of the Massachusetts Bureau of Statistics of Labor, for the years 1879 and 1880.

[2] In 1878 Maryland passed a law that the products of the labor in the State prison should not be sold within the limits of the State. Should all

stone-breaking, which requires a greater muscular effort than any skill or talent which a trade like brush-making would demand. But it is very doubtful if any of these measures would silence the outcry against convict labor, which depends more upon the political aspirations of the demagogue than upon any real reasons for complaint.

Immigration.

The advantages offered by cheap and fertile lands open to the first comers, comparatively low burdens of taxation, and a republican form of government, have drawn from other parts of the world a nearly steady stream of immigration which has been unexampled in the peaceful movements of population. This has been in every way an advantage to the nation, for it has furnished it with a sturdy population, only the young and vigorous, as a rule, emigrating from their homes; it has produced a race that is pre-eminent for its vigor, and this may be attributed in part to the blending of many nations, and in part to the free institutions by which we are governed; and it has largely increased the productive capacities of the country, by supplying it with the labor that is necessary to develop the natural

the States pass such laws, there would be a new subject for Congress to deal with. The constitution of Michigan [1850] contains the following provision: "No mechanical trade shall hereafter be taught to convicts in the State prison of this State, except the manufacture of those articles of which the chief supply for home consumption is imported from other States or countries."—Art. xviii, § 3.

advantages in agriculture, industry, and commerce of the nation. It is at once a cause and a result of the position which the nation occupies among the other and older nations. To shut out immigration would be to cut off one of the chief factors of our greatness; and although such a measure has been at times thought of, under temporary political excitement, yet only in the case of the Chinese and of persons imported as slaves, has it ever been put into practice. The general policy of the government has, however, been to welcome all, irrespective of race or color.

Under some conditions this immigration might produce complications and be a source of danger to the country. In the nations of Europe the influx of a few thousand persons produces disorder and disturbs the existing situation so as to call for the interference of the government. The Jews, when persecuted in Russia, went in large bodies to the neighboring states, but these could not receive and care for them, because their institutions were not elastic, having, after long centuries of operation, become suited only to the condition actually existing, and they could not be modified to meet any new and sudden contingency. But in this country there is at present an immigration of nearly 2,000 per day, and yet no disturbance to trade or industry results.

The Federal government has used its powers to regulate commerce for imposing regulations upon

the transportation of passengers in vessels. Thus in 1855 a law was passed giving to each immigrant two tons of space, and providing for the proper ventilation of the vessel, as well as for a sufficient supply of food; and also providing a system of inspection for vessels. But when the immigrant has landed, in the absence of any Federal regulations the States have undertaken to provide remedies for the evils that might follow an unrestricted immigration, and in this they are limited only by the provision in the Federal laws, that unequal charges shall not be imposed. For example, at times immigrants who are physically unfit to maintain themselves, who are morally defective, and who must become a charge upon the community, frequently find their way to these shores, or are even sent here by their former rulers. The steam-ship company may be compelled to give a bond for all such immigrants which may indemnify the State for any charge for maintenance or relief during five years it may be put to on account of these immigrants.[1] In addition, the immigrant was exposed to fraud and trickery on the part of knaves, and the State intervenes to protect him against such imposition.[2] The States are, how-

[1] Formerly the prepayment of the passage money by the immigrant was the exception, and on landing he was sold by public auction into temporary servitude, until he could repay his passage money and other advances.

[2] As the bulk of the immigration comes into the country by the port of New York, it will be interesting to show what measures have been taken for his protection in that place. "Upon the arrival of an emigrant vessel at quarantine, six miles below the city, it is inspected by the health officer of the port, and the sick emigrants, if any, are transferred to hospitals, where

ever, looking to Congress for regulation of immigration.

So much space has been devoted to some of the more important objects of State agency that but little remains for other and no less important functions. The State exercises complete control over the navigable rivers and streams within its boundaries, and may regulate the ferries and bridges over it, even determining the amount of toll to be charged. It may undertake internal improvements, though this power has been variously granted and even forbidden. The constitution of Missouri says that "Internal improvements shall forever be encouraged by the government of this State" (Art. vii, 1820). In some States there is a special administrative officer, known as the State engineer, for recommending and supervising such improvements. Louisiana allows its Legislature to create internal improvement dis-

they are cared for by the commissioners of emigration or by the quarantine commission. They are then transferred with their luggage to Castle Garden, where the name, nationality, former place of residence, and intended destination of each indivdual, with other particulars, are registered. The newly arrived emigrant here finds facilities for supplying every immediate want, without leaving the depot. The names of such as have money, letters, or friends awaiting them are called out, and they are put into immediate possession of their property or committed to their friends, whose credentials have first been properly scrutinized. There are clerks at hand to write letters for them in any European language, and a telegraph operator to forward despatches. Here, also, the main trunk lines of railway have offices, at which the emigrant can buy tickets, and have his luggage checked; brokers are admitted, under restrictions which make fraud impossible, to exchange the foreign coin or paper of emigrants; * * * employment is provided by the labor bureau, connected with the establishment, to those in search of it; such as desire to start at once for their destination are sent to the railway or steamboat; while any who choose to remain in the city are referred to boarding-house keepers admitted to the landing depot, whose charges are regulated under special license, and whose houses are kept under special supervision by the commission."—*Drone.*

tricts, composed of one or more parishes, and may grant a right to the citizens thereof to tax themselves for their improvements (Constitution of 1864, Title x, Art. 137). But by the constitution of Michigan the State is prohibited from being a "party to, or interested in, any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the State of land or other property" (1850, Art. xiv, § 9).[1] Many of the States, however, own and manage public works of great importance, and these are under the superintendence of a special executive officer or a board of officers. Such, for example, are the Erie Canal and its branches in New York State. The State may exercise its powers to regulate the employment of children in factories, or in public performances. Thus, in Massachusetts no child under ten years can be employed in any manufacturing or mercantile establishment; no child under fourteen can be so employed without twenty weeks of schooling in each year; and no child under fifteen can dance, play on musical instruments, or appear as a wire- or rope-walker, rider or gymnast, in public, except under certain conditions. The State may compel a manufacturer to take such reasonable precautions as will ensure the workmen against

[1] In 1803 an act of Congress was passed, granting three per cent. of such net proceeds to the State of Ohio for "laying out, opening, and making road within the said State, and to no other purpose whatever." Similar grants (in some cases of three and in others of five per cent.) have been made to the States admitted into the Union since Ohio, except to Maine, Texas, and W. Virginia, in none of which did the Federal government possess any public land.

accidents, such as fencing in running belts or machinery, and railing hatchways.

A large number of functions have been delegated to the local governments. Throughout the United States, township, county, or other local authorities have the general control and supervision over the ordinary public highways, because these are for public use, unless there be some special restriction regarding them. They are repaired by the public authorities, and in many States all male inhabitants twenty-one years of age or over are compelled to labor on the roads a specified number of days each year, but in others this service has been commuted into a money payment. The government of a city has power to establish, grade, pave, and vacate streets ; to regulate the use to be made of them, the speed of travel along them, and the use of sidewalks ; and to authorize railway, water, telegraph, and gas companies to use them for their respective purposes.

There are many functions which apply to populous communities and are properly exercised by the municipal authorities. For example : the general health of a community is a proper subject for regulation[1] ; and the authorities may regulate cemeteries and burials ; establish quarantine rules to check the introduction or spread of an infectious or contagious disease ; prescribe rules for the removal or carrying through the streets of dirt, offal, or rubbish ; construct and maintain sewers ; abate or remove nui-

[1] There are State Boards of Health.

sances; regulate the construction of tenement-houses, that there shall be plenty of light and air, good sanitary surroundings, and means of escape in case of fire. To protect the safety of the community they may regulate the manufacture, storage, or sale of explosives; establish fire limits, within which no wooden structure shall be allowed; and maintain a paid fire department; and in the general interests of the community they may establish and regulate markets, pass inspection laws [1] to protect buyers against fraud or imposition through false weights, adulterated or unfit articles for consumption; to exercise some control by requiring licenses over certain occupations, as those of hack- and draymen, auctioneers, performers in public, etc.; to lay out and maintain public parks; and to take measures for supplying the city with gas and water. In fact, this power of the State to do whatever is essential to the public welfare is almost unlimited, and "pervades every department of business, and reaches to every interest and every subject of profit or enjoyment"; and we must refer the reader to special works on the subject. "It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries, or prescribe limits to its exercise." [2]

[1] The system of *inspection laws*, and the host of officers which they engendered, were considered by the constitutional convention of New York to entail such annoyances and burdens upon the community as to outweigh any benefits resulting from them; they were abolished, and the Legislature was forbidden to recreate them. Article v, § 8, Const. of 1846.

[2] Commonwealth *vs.* Alger, 7 Cush. 84. See also Judge Cooley's work on "Constitutional Limitations," and Judge Dillon's treatise on "Municipal Corporations"; two works of great value.

CHAPTER IV.

STATE FINANCES.

Some very important functions of State agency remain to be considered. In order to exist and be able to perform the functions we have considered in the former chapters, the State must have means of paying the expenses necessarily entailed ; and the welfare and prosperity of the commerce and industry of the nation, and the creation of national wealth, depend much upon the manner of providing these funds. The State possesses no more potent instrument for good or evil than the power to tax its subjects. In emergencies or in the case of expenditures so large that they cannot at once be provided for by taxation without imposing too onerous taxes on the payers, recourse must be had to loans, and national and State debts are created ; and the limitations on the borrowing power of the States form an important chapter in their history. Moreover, the national and State governments have had much to do with the currency and banking systems of the country. These various functions will now be considered.

Taxation.

Viewed by itself a tax is a portion of a man's savings that is taken from him under form of law by the State; it is a deprivation. In return, however, the State affords protection to his person and property, and thus renders him a great service in return; so that when viewed in connection with the State agency an equivalent service is returned to the taxpayer. It follows, therefore, that every tax should be jealously scrutinized in order to show that an equivalent service is rendered by the State, and that capital is not needlessly taken in the form of taxes from the pockets of the people, where it would fructify and increase, to be wasted by government in unnecessary or unprofitable expenditures. This is not, however, always possible, for taxes are seldom imposed and collected for specific purposes in such a way that they may be examined apart. For example, the revenues of the Federal government are derived from general tax laws, and there is no limit to which these revenues may not attain. The inhabitant of a county when he pays his annual tax, pays for both State and county purposes in a lump sum, and he cannot tell without examining the laws, exactly what portion is for the maintenance of the poor, of roads, of State prisons, etc. In a city special rates for specific purposes are also imposed: for example, there is a water tax, in payment of the expense of distributing water through the city; in cases of street improve-

ment the whole expense may be imposed on those supposed to be more directly benefited. An ideal tax system would allow the many items to be thus distinguished, but such a system would be cumbersome. Some State constitutions provide that "no tax shall be levied except in pursuance of a law, *which shall distinctly state the object of the same;* to which object only such tax shall be applied." This, however, applies to the law only; in the collection the laws are combined, and at one time the taxpayer pays for a number of objects.

As government exists to further the public or general interests, taxation should be applied for those public purposes only which form the proper functions of the government. A State cannot levy taxes to raise money to loan to persons who have suffered from a fire or a public calamity; or to supply farmers whose crops have been destroyed, with provisions and grain for feed and seed; or to aid manufacturing enterprises; or to pay a subscription to a private corporation not for a public purpose.[1] "The Legislature has no constitutional rights to . . . levy a tax, or to authorize any municipal corporation to do it, in order to raise funds for a mere private purpose. No such authority passed to the Assembly by the general grant of the legislative power. This would not be legislation. Taxation is

[1] These matters have been passed upon by the courts. See Lowell *vs.* Boston, 111, Mass., 454; State *vs.* Osawkee, 14 Kas., 418; Loan Association *vs.* Topeka, 20 Wall., 655; and Weisoner *vs.* Douglas, 64 N.Y., 91.

a mode of raising revenue for public purposes. When it is prostituted to objects in no way connected with the public interest or welfare, it ceases to be taxation and becomes plunder. Transferring money from the owners of it into the possession of those who have no title to it, though it be done under the name and form of a tax, is unconstitutional for all the reasons which forbid the Legislature to usurp any other power not granted to them."[1] "Taxes may be levied and collected for public purposes only," says the Missouri constitution (Art. x, § 3, 1875). It is necessary to make clear this doctrine, for, as will be seen, the system of taxation imposed by the Federal government does indirectly give assistance to private enterprises. Again, taxation should be used only to supply the legitimate wants of the government, and only so much capital should be taken from the people as will fill these needs. "No other or greater amount of tax or revenue shall at any time be levied, than may be required for the necessary expenses of the government" (Florida constitution, 1865, Art. viii, §1). Exactly what are necessary expenses or even what are public purposes, is often very difficult to decide, and must be determined by the conditions of each State. But no government has any right to raise a greater revenue than it requires, and the people should jealously guard against the undertaking of any enterprises of doubtful expediency which will increase

[1] Sharpless *vs.* Mayor, 21 Penn., St. 168.

the burdens of taxation. In case the existing tax laws are obtaining a surplus revenue over and above the legitimate wants of the government, it is the duty of the Legislature to modify them in such a way that the revenue may be diminished. In other words, taxation should be governed by expenditure; only what is required should be taken. A surplus revenue invites extravagant and reckless expenditure, gives opportunity for legislative jobbery and log-rolling, and handicaps industry with unnecessary burdens.[1]

Taxation should be equal; by which is meant that the subjects should contribute toward the support of the government, as nearly as possible, in proportion to their respective abilities.[2] Equality of taxation is not attained by taxing all alike irrespective of their condition. On the contrary, a poll tax, which takes from all a certain sum, is a most unequal tax, and the same may be said of the stamp tax levied by the Federal government on matches. The poorest man who buys a box of matches pays the same tax as the richest. The inequality of a poll or capitation tax has been recognized in some States, and such a tax is forbidden by their constitutions (*e. g.*, Maryland); in other States it can be levied for certain purposes only (*e. g.*, in Arkansas, where it can be levied for county purposes alone).

[1] On the evils and dangers of a surplus see Sumner's Life of Jackson; also the debates in Congress, 1881 and '82. The River and Harbor Bill of 1882, a notoriously dishonest measure, would never have been passed without the then existing surplus revenue.

[2] This is the first of Adam Smith's canons of taxation.

But while the constitutions of a number of the States provide for "equal and uniform taxation," no system of taxation, State or national, has ever been devised that has not created inequalities of burdens, or produced practical difficulties which have prevented an equal assessment. In theory the most equal and consequently the best system of taxation, is one that taxes land alone, but it must necessarily be some time before this system can be adopted.

But when the right of taxation is once recognized, the power is unlimited. "The power to tax involves the power to destroy." Thus, at the outbreak of the Rebellion the currency issued by State banks was purposely taxed out of existence by the Federal Congress, and this severe measure was upheld as constitutional. It follows, therefore, that the Federal government cannot tax instruments that are essential to the State governments, nor can the State tax Federal instruments. For, if the power to tax was once allowed or recognized, it might be carried so far as to defeat and render helpless the agencies of government that were taxed. A State might tax to an excess which would defeat all the ends which these agencies were intended to attain, the mail, the mint, patent rights, or the office or salary of a Federal official. For a like reason a State cannot tax evidences of debt issued by the Federal government, for this would discredit them in the market and affect

the national credit[1]; and the same prohibition applies to the Federal government with respect to the agencies of the State government. It is essential that each government should exercise its functions within their proper spheres, unhampered by any such restrictions as might be imposed by an exercise of the taxing power.

Federal Taxation.

Under the Constitution Congress has power to lay taxes, duties, imposts, and excises. This provision includes every species of taxation, direct and indirect, poll taxes, taxes on property, income, and the transaction of business, license taxes, and duties on imports and tonnage. The only limitations on the taxing power of the Federal government are that all taxes shall be uniform throughout the United States, that direct taxes shall be apportioned among the several States according to their respective populations, and that no taxes or duties shall be imposed on articles exported from any State. In practice, however, the Federal government has depended almost wholly upon indirect taxation, taxes upon imports and excise duties on commodities manufactured within the limits of the country, while the

[1] The act of Congress of June 30, 1864, exempted from State taxation, United States bonds and coupons, the national currency and United States notes, Treasury notes, Fractional notes, checks for money of authorized officers of the United States, certificates of indebtedness of the United States, certificates of deposit of the United States, and all the representatives of value of whatever denomination which may have been or may be issued under act of Congress.

States have employed direct taxes, taxes on land and personal property and a few other sources of revenue which will be mentioned hereafter.

From the formation of the central government taxes or duties have been imposed upon commodities brought into this country. By this means a large revenue is easily collected, and no limits appear to exist in the imposition of such taxes, for they may be imposed upon every conceivable commodity, whether a raw material or a manufactured product, that can be imported. If these duties were imposed upon articles of luxury or indulgence, or if they were confined to commodities that were not produced or manufactured in this country, they would be unobjectionable, and in the present economic situation of the country, would furnish a most available source of revenue. But they have never been so limited, and under a mistaken idea of State functions they have been turned to a purpose that is not only opposed to all the doctrines of our government, but is also working great injury to the productive forces of the country. A duty on imports has come to be regarded as a means of developing home industry, and the existing tariff is avowedly a "protective" tariff, that is, one that is intended to foster home industry by protecting it against foreign competition. Under the mistaken idea that every nation should be self-sufficient, and not depend upon a foreign nation for the more

important materials of life and industry, the powers of government were turned toward securing to domestic industry a "home market" for its products. This, however, could be done only by shutting out foreign products which might come into competition with the domestic articles, and these could be kept out only by measures of force (which were not to be thought of), or by taxing these products to such an extent as to make it unprofitable to import them. For no trade can exist for any length of time, unless there is some profit to both parties to the exchange; and if one party is so burdened by cost of transportation, by taxes, or other charge, as to make it unprofitable to transport and exchange his goods, the trade will not take place. The protective tariff is thus a peaceful means of securing what could otherwise be produced only by war. And like war, it is destructive of commerce. For international commerce is essentially an exchange of commodities, and whatever is imported must be paid for by something that is exported; in order to buy, a nation must sell. If through excessive duties the amount of the imports of a nation is checked, the exports are also checked, and the market for domestic productions being thereby lessened, the productive capacity of the country is diminished.

Another result flows from a protective tariff, and it forms one of the most serious objections to such a measure. The great body of consumers are taxed

to support a comparatively small number engaged in protected industries; it is a way of taxing the many for the benefit of a few. For example, a man may, before engaging in an industry, find that the article he wishes to make can be made abroad and brought to this country at a less cost than he believes he must pay. Unless he can find means of abolishing this difference of cost, it is obvious that he cannot undertake the manufacture. Instead of depending upon the skill of his workmen, and the results obtained by the application of machinery to the great resources of the country, which are ample to atone for the apparent difference[1] in the cost of manufacture, he goes to Congress and has a duty imposed on the foreign product when imported into the country. This he gains on the ground that it is fostering home industry, and is in the interest of American labor. The manufacture is started, and there is at first a demand for the skilled labor necessary to carry on the manufacture, and for the materials used in the process. These are results that are plainly seen and are considered as the best defence of the policy. But a tax can never create wealth; and the difference in cost between the foreign and domestic product, which is intended to be made up

[1] I say "apparent" difference because there is no data which show a *real* difference in the cost of production. Comparative tables of the wages paid, and the cost of living, furnish but slight grounds for any satisfactory reasoning. As the industries of the country have been from the first years of this century under the influence of a protective tariff, their condition is in part artificial, and this in itself is sufficient to introduce complexities into any attempt to find the real cost of production.

by the tax or duty on the foreign product, must be paid by somebody. It is the home consumer who pays this difference, and he is compelled to pay a higher price for what he wants, in order to maintain American industries. It is useless to say, that a protective tariff is a revenue measure, for it is intended to shut out importations ; while a revenue can be collected only on what is brought into this country. Revenue ends where protection begins. Moreover, the man who imports a foreign commodity, and pays a duty on it, pays that duty to the government, in whose favor alone a tax should be imposed. But under a protective tariff, the consumer pays a higher price, and he pays it not to the government, but to the manufacturer. The government by its own act not only shuts out importations from which it might obtain a revenue, but at the same time imposes taxes upon the consumers which accrue to the benefit of those engaged in manufactures, an exercise of the powers of government that cannot be defended on any rational grounds. Were the obstructions which a protective tariff offers to the increase of a foreign commerce removed, and trade allowed to flow in its natural channels, a market for American products would be obtained, which would offer a great stimulus to American industry ; and while the population and productive capacity of the country are increasing as rapidly as they are, this is a most important, if not essential, considera-

tion. The commodity that is imported into this country from abroad is a demand for home products, for it must be paid for by a product of home labor. So that all foreign importations become as truly one of the results of the application of American labor to home industry as if they had been brought into existence for the use of man within the limits of this country. To make trade free, would be the best encouragement to American industry that could be granted.

Besides limiting the markets for American products, and taxing the consumers for the benefit of those engaged in manufacturing enterprises, a protective tariff influences the movement of capital and of labor, for it offers special inducements to invest capital and employ labor in the protected industries by holding out the promise of a profit. Competition among domestic manufacturers may reduce these profits, and may reduce the price of the commodity to the consumer. These are results, however, which flow from natural causes and are not produced by the tariff.[1] Monopolies are created, and the tendency for capital to combine in a few hands, is intensified. This is a result produced by any indirect taxes. Thus, the copper-mining industry in this country is a monopoly which has been created by the tariff, and

[1] It would be impossible to note the many absurd claims of benefits to be derived from a protective tariff. The protectionist side is best presented in the writings of Henry C. Carey and Prof. Robert Ellis Thompson. On the other side, the writings of Prof. Wm. G. Sumner, David A. Wells, and Edward Atkinson should be consulted.

the manufacture of matches is in the hands of a few large establishments, a result that is largely due to the excise on matches.

The history of the tariff of this country is too extensive to be even summarized here, and has formed an important factor in the political and industrial history of the nation. The existing tariff (1882) is essentially that which was imposed during the first years of the late war, when the government was straining every means to secure the funds its necessities called for. It was hastily framed, and was based on the idea that a high duty meant a high revenue. The result was that in many cases excessive duties were imposed on certain classes of commodities (as, for example, iron and steel, and woollen manufactures), and these proved to be highly protective to those engaged in these industries in this country. This tariff has never been materially modified in its protective duties, and any proposed revision has been met by a determined opposition on the part of those enjoying protection. It may, however, easily be shown that many of the results claimed for the tariff are false, and that the necessity for such a stimulus to domestic manufactures does not now, if it ever did, exist; and that the tariff is a real burden on the industries of the nation. A strong movement for the reduction of duties is now being made, and must eventually be successful, for the iniquities of a protective tariff need only be known to be condemned.

A system of excise duties on domestic productions or manufactures has never been in favor among the people, and it has been resorted to only in cases of necessity, when other sources of revenue were not sufficient. Thus, in 1791, to defray the expenses of government, taxes were imposed on distilled spirits, and caused an insurrection, known as the Whiskey Rebellion, in some of the States.[1] In 1794, internal duties were imposed on carriages for the conveyance of persons; on snuff, sales at auction, and licenses for selling wines and foreign distilled liquors by retail. In 1802, on the recommendation of Jefferson, all internal taxation was abolished, but under the necessities created by the war of 1812 the system was re-imposed, and acting on a former experience, all the old taxes were adopted, and for the first time in the history of the country, taxes were laid upon domestic manufactures other than spirits, snuff, and sugar. But all these duties were regarded as "war measures," to be imposed only

[1] This curious chapter in our history is little understood. The opposition to the tax was not on account of any theoretical considerations respecting internal duties, but was due to the circumstances of the country, which were at that time ill-suited to endure an elaborate excise system. The tax bore most heavily in the backwoods of Pennsylvania, where means of communication were few, and great difficulty attended the carriage of goods to the markets, which were almost entirely in the eastern part of the State. It was therefore easier for the farmers to convert their grain into whiskey and transport it in that shape; and the still was a necessary appendage of every farm. As there was no money in circulation, spirits served as a currency; and this aggravated the complaints against the tax, as it required the payment of money. Moreover, political considerations entered into the question, so that it is difficult to state exactly what was the ground of complaint. See Breckenbridge's "History of the Western Insurrection," and Von Holst's "Constitutional History of the U. S.," vol. i, p. 94.

while the government required the revenue ; and in 1817, when it was seen that the necessity no longer existed, they were repealed. From 1818 to 1861, no duties of excise, or internal taxes of any description, were imposed.

The Rebellion created so great necessities that every available source of revenue was touched without obtaining all the funds necessary. Internal taxation was again adopted, and on such a comprehensive scale as to form a complete code of taxation, and one of the most extraordinary which any country has ever seen. It provided for taxation upon trades and occupations ; upon sales, gross receipts, and dividends ; upon incomes of individuals, firms, and corporations ; upon specific articles not consumed in the use ; upon legacies, distribution shares, and successions ; upon various classes of manufactures ; and it provided for stamp duties. Processes were taxed as well as products of industry ; taxes were laid upon all labor, upon all tools with which work was to be done, and upon all classes and conditions of men. Every branch of trade and industry, every kind of manufacture, raw materials and net results, alike bore the burden of taxation. Some industries (and notably those in which alcohol was largely used) were taxed out of existence ; and taxes on many articles were duplicated, for the finished product of one manufacture is the raw material of another, and is almost always itself the result of

several distinct and separate manufacturing processes. That such an onerous and pervading tax system did not materially injure the industries of the country is a striking proof of its productive capacity. In 1865, measures were taken to reduce taxation and relieve the industries of the nation from some of the burdens of taxation, and in the following years many large and important reductions were made, so that in 1872 the internal-revenue system was reduced to about what it is at the present writing. For the fiscal year ending June 30, 1882, the amount of revenue collected from internal sources amounted to $146,000,000, and was derived from the following articles:—distilled spirits, tobacco, fermented liquors, banks and bankers, and stamp duties on bank checks, matches, and patent medicines, etc. It is doubtful if these taxes will be retained longer.[1] The government is deriving a large excess of revenue from existing tax laws, and the internal-tax system will be modified before the tariff is materially reduced; yet it is difficult to see on what just grounds the taxes on distilled spirits and fermented liquors, and on tobacco, can be repealed. They are taxes on indulgences, and do not therefore involve any increase in the cost of living, and they are very productive taxes, yielding a large revenue.

[1] While these pages were going through the press, Congress abolished the taxes on banks and bankers, whether State or national, except on the circulation of national banks; the stamp taxes on bank checks, drafts, matches, perfumery, and patent medicines; and other internal taxes have been reduced.

In fact, the objection to the system is based rather on political than economic reasons; and it is from the fact that the service employed in the collection may be employed for party or political purposes that the greatest opposition is made to it. A system of excise duties is suited only to a country where capital is abundant and remunerative, and where manufactures are established and prosperous. For this reason the nation is much better able to stand a system of excise than it was in 1791, when it was exhausted by the long struggle for independence. And if the internal taxes are reduced to those on spirits and tobacco, no objection on economic grounds can be made to them. But it is a mistake to regard these subjects as capable of bearing almost any rate of taxation. On the contrary a higher revenue is better assured by a low than by a high duty, as the latter leads to fraud and concealment.

The Federal government thus derives almost the whole of its revenue from indirect taxation. The postal revenues are in return for a service rendered, and when any large surplus is obtained, the rates of postage are decreased. The revenue derived from the sale of public lands forms but a very small part of the Federal income. There are other sources of revenue, but they are either comparatively unimportant, or are about to be abolished. The revenues for the year ending June, 1882, were derived from the following sources :—

From customs	$220,410,730
From internal revenue	146,497,595
From sales of public lands	4,753,140
From tax on circulation and deposits of national banks	8,956,794
From repayment of interest by Pacific Railway companies	840,554
From sinking fund for Pacific Railway companies	796,271
From customs fees, fines, penalties, etc.	1,343,348
From fees, consular letters patent, and lands	2,638,990
From proceeds of sales of government property	314,959
From profits on coinage, bullion deposits, and assays	4,116,693
From Indian trust funds	5,705,243
From deposits by individuals for surveying public lands	2,052,306
From revenues of the District of Columbia	1,715,176
From miscellaneous sources	3,383,445
Total ordinary receipts	$403,525,244

The most serious objection to the Federal tax system is that it is not easily modified. If there is a surplus revenue no serious attempt is made to reduce taxation by the repeal or reduction of duties; nor is it attempted to alter taxation according to the requirements of industry. Both the tariff and internal-revenue systems were hastily framed and without due consideration of their effects on the economic relations of the country; and while the latter has been so modified as to make it in a great

part a fair system, the iniquities of the tariff remain almost unchanged. Meantime a large surplus revenue is unnecessarily being taken from the people, forming a fund that tempts fraudulent and dishonest legislation, and jobbery of every kind. The taxation should be modified each year according to the needs of the government, and the condition of the industries and commerce of the country; in order that the people may not be deprived of capital which could be turned to profitable employments, and that no manufacture or trade may be injured or restricted by excessive taxation.

The Federal government employs its own machinery for the collection of the internal and customs duties. In the former the States are divided into collection districts; and in the latter certain ports are designated as "ports of entry," where there is a *custom-house* with the officers necessary to value the importations and collect the taxes thereon. Many of these custom-houses do not take in enough to pay the expenses of maintenance.

State Taxation.

Although each State has its own system of taxation, yet all agree in that they depend almost wholly on direct taxation, taxes on land and personal property, for their revenues.[1] Taxes on commodities are not levied by the State, but many different imposts

[1] Within the last few years the taxation of corporations has been introduced, and forms a profitable source of revenue.

are used, such as taxes on capital, license taxes, and poll taxes. Not only are needs of the State government to be met, but each of the minor political divisions, the counties, townships, and municipalities, must provide for the expenditure incurred while fulfilling the functions which properly belong to them. Thus the State must provide for the payment of public officers, for public charities, lunatic asylums, grants to schools, etc.; the county sustains a prison and must provide for the costs of trials, and for the opening of roads and highways; while the cities have a large number of expenses which require a large revenue. All of these different revenues are collected under State laws, but the collection itself is a local concern.

Thus the income required by the State is determined, and is apportioned among the counties of the State in proportion to their means of payment, that is, in proportion to the value of the property contained in them. In like manner, the sum to be raised by the counties, both for county and for State purposes, is apportioned among the townships of the county. So that when the township authorities assess and collect the taxes, they collect at the same time three distinct systems of taxes, the State, the county, and the township. This does away with the machinery and expense that would be required were the taxes collected separately and by independent instruments. These taxes are all imposed under

State laws, but local expenditure is usually under the control and management of the local authorities.

The machinery for determining the taxable property in a locality is also a local concern, for it would be absurd to entrust to the State authorities a duty that requires, above all, an accurate knowledge of persons and property in a locality. The townships and cities elect assessors, whose duty it is to determine, under forms of law, the taxable property which each person in the city or town may possess, and the sum of all the estates in the township. This is for the purpose of determining what amount of taxation each property-holder shall pay, the tax being proportioned to the value of his property. It is at once evident that it is useless to expect any uniform system of valuing property by these local authorities. In the first place, they must depend almost entirely upon the statements of the property-owners, who are interested in keeping their taxes at the lowest possible point, and to do it will not hesitate to conceal the true value of their holdings. This is especially noticeable when it is attempted to tax personal property, *e. g.*, stocks, bonds, and mortgages, and other securities. No assessor can discover this kind of property, and hence it escapes taxation, so that it is considered a mere form to include many forms of personal property in a tax schedule. Again, as county taxes are apportioned among the townships in proportion to the value of

the property, it is in the interest of the assessors to make their valuation low in order that taxation may be light in their own township. It results, therefore, that taxable property in townships where the assessors are honest may be rated at a high value, while in others it may be rated at much below its true value; the former townships will thus bear a greater share of taxation than would properly be apportioned to them were property assessed equally, while the latter will evade the burdens that justly belong to them.[1]

In the matter of county taxation it is no different. The county authorities will cut down the valuation of the townships in order that their share of the State tax may be as small as possible. These practices render any equal taxation impossible, for the property in one county might be assessed at one half of its true value; in another, one quarter, and in another, three quarters. In no instance is the property taxed at its full valuation, but some proportion, such as one half or two thirds of its value, is adopted. In some instances in New York the valuation of real estate for taxation was, at one time, reported as low as twenty per cent. of its real value. In a majority of cases in the country the rate varied from twenty-five to thirty-five per cent., and rose in the cities to fifty and possibly sixty per cent. as a

[1] In Massachusetts the valuation of property for the purposes of taxation is made every ten years; in Michigan the townships are valued annually, but the State Board revises the returns only once in five years; and in other States the period is determined by the Legislature.

maximum, and this, too, when the law required the assessor to estimate real estate at the "*full and true value* thereof." Nor has the experience of other States been different. In the valuation of personal property (the value of which economists consider should be at least equal to that of real property) the widest possible range exists; but even under the best system of valuation it is estimated that at least *one third* escapes all taxation. For "much of the [personal] property which it may be desirable, and under the present system is made obligatory on the assessors, to assess, is invisible and incorporeal; easy of transfer and concealment; not admitting of valuation by comparison with any common standard, and the determination of the *situs* of which [place of taxation] constitutes one of the oldest and most controverted questions of law."[1]

In order to remedy to some extent these inequalities, arising from the action of local assessors, Boards of Equalization have been established as a part of the county and State governments. The duty of the county Board of Equalization is to review the returns of the township authorities, and to so modify them as to throw on each township its due share of taxation. In like manner the State Board reviews the returns of the county authorities, and in this way a certain degree of equality of taxation, at best imperfect, is attained.[2]

[1] Report of the N. Y. State Commission, p. 50.

[2] Local taxation in this country has been made the subject of much exam-

The inequalities of the State system of taxation are further increased by the many sweeping exceptions, both as regards real and personal property, that have from time to time been made. For example, all securities of the Federal government (see note on p. 137) are exempt from taxation, so that a man may invest his money in government bonds and escape all local taxation on them. In New York State the following are exempt: imported merchandise in original packages, in the hands of the importer; goods and chattels owned by residents of the State, but having a *situs* out of the State; property having a *situs* in this city, but owned elsewhere[1]; property *in transitu;* and the deposits in savings banks, and the accumulations of life-insurance companies.[2]

These are some of the exceptions made with respect to personal property. It is also customary to exempt from all taxation real estate devoted to certain purposes. Thus, in New York, churches, incorporated schools, reformatory institutions, almshouses, public libraries, cemeteries, property of the United States, and of the city, and some other forms of property,

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ination by commissions and legislation, but it is still far from being placed on a satisfactory basis. The reports of the New York State Commission (1871), of which Mr. David A. Wells was the chairman, are regarded as the best examination of this subject.

[1] Yet in 15 Wall, p. 324, it was decided that public securities have a situs where found, and are taxable only there.

[2] See Laws of New York, 1851, ch. 176, § 2; 1857, ch. 456, § 4; Hoyt *vs.* Com. of Taxes, 23 N.Y., 224; and Parker Mills *vs.* Com. of Taxes, 23 N.Y., 242.

are freed from taxation, and have therefore never been assessed. Such exemptions may be made in favor of individuals, as in the case of "ministers of the gospel or priests of any denomination," who are allowed an amount not exceeding $1,500 to be free from taxation; the personal property, tools of trade, and household furniture of our poor persons are exempted; or in favor of a corporation, as in Massachusetts, where the land taken by a railroad corporation is exempt from local taxation,[1] for it is taken in the right of eminent domain to be used for public purposes. Public lands in the Western States are not subject to taxation. "The right to make exemptions is supposed to be exercised on reasons of State policy, and presumptively such exemptions contribute to the general public benefit."

The systems of local taxation in operation in the States are far from satisfactory, and the questions presented by their shortcomings are difficult to solve, for in this matter the States do not hesitate to use taxation against the business interests of other States. Taxation may be imposed on business, and this may be done in the form of taxes on the privilege for carrying on the business, on the amount of business done, and on the gross or net profits of the business; and if in a certain occupation or among certain classes of trades taxation is higher than in other occupations or trades, there is a discrimination

[1] It is subject, however, to State taxation.

against the taxed trades. The Federal Constitution provides that "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States" (Art. iv, § 2), and this is believed to preclude any State from imposing any higher taxation upon property within its limits, belonging to citizens of other States, than is imposed on its own citizens.[1] It does not, however, prevent a State from so taxing a corporation, for corporations are not citizens within the meaning of the Constitution. Hence a State will often tax foreign corporations, that is, corporations formed outside of the State, at a higher rate than its own corporations; other States imitate the example, and in this way a large number of "retaliatory" tax laws have been adopted, which are framed for the sole purpose of meeting taxes discriminating against foreign corporations, and which do injury to the interests of the States adopting them. It is obviously for the best interests of the States that no burdens in the form of taxation be laid upon any form of enterprise; and many States have so far recognized this principle as to offer special inducements to investors of capital by exempting their undertakings from taxation. Other States in attempting to tax every thing directly discriminate against the employment of capital in manufactures or trade within their boundaries, and thus limit and restrict the increase of

[1] Corfield *vs* Coryell, 4 Wash., C. C., 380.

wealth and the development of resources. For example, by exempting mortgages from taxation, Maryland invites capitalists to invest their funds in that form of property. California has set an example that should be followed by other States in declaring debts to be not property, though in the majority of the States all forms of credit and mortgages are taxable as if they were themselves property instead of evidences of debt.[1] In some States corporations are not taxed, while Massachusetts and Pennsylvania derive the greater part of their revenues from this source. The object of any tax system is to obtain a revenue for public objects, but it is most desirable to so frame the tax laws that the least possible injury is done to the industries and trade of the State. Every facility should be given to the development of the natural resources of the State and to the application of labor and capital to this object. To burden industry with unnecessary taxes is to injure the sources of national wealth, and to restrict trade by taxation is to do harm to that which is essential to industry,—a free movement of commodities. The measure for judging any system of taxation is not the amount of revenue it secures, but the effect it has on the economic relations of the community; and that system which supplies the needs of government with the least friction to industrial and commercial undertakings is the best, what-

[1] See an article by David A. Wells in *The Atlantic Monthly*.

ever may be the subjects of taxation from which the revenue is derived. This system may differ among the different States, for their economic situations and necessities are not alike: some are manufacturing States, others purely agricultural; some are on the seaboard, which offers special facilities for developing a foreign commerce; others are central inland points, which are well fitted to serve as distributing centres for the vast internal commerce of the country. These varied conditions are reflected in the manner in which the wealth of the States is placed, and should be considered by the legislator when framing a system of tax laws. In general, however, the following rule may be laid down:—"NEVER TAX ANY THING THAT COULD BE OF VALUE TO YOUR STATE; THAT COULD AND WOULD RUN AWAY, OR THAT COULD AND WOULD COME TO YOU."[1]

License duties are, generally speaking, for the purpose of supervising or regulating certain trades and occupations, and therefore belong more to the police power than to the financial arrangements of the State. Where revenue is the object they form an unequal tax, for a fixed sum is generally demanded from all engaged in the licensed occupation. As revenue measures, however, their returns are so small as not to require any extended notice. The subject of municipal taxation is too intricate to be here specially discussed.

[1] From a pamphlet on taxation by Mr. Enoch Ensley, of Memphis, Tenn. See also a report to the Legislature of New Hampshire by Geo. Y. Sawyer [1876].

As to the limits on expenditure by government, little can be said, because no limits have ever been determined. As the State advances in population and wealth, new objects of governmental expenditure must arise, and the sphere of State agency, by extending to objects not before included, must tend to increase the expenditure of government. There is a great waste in the manner of dispensing the State revenues, and while they are often rightly directed, yet there is not sufficient care exercised in the appropriations made by the Legislatures. Corrupt influences are at work to secure State aid to questionable enterprises, and legislators are too often more intent on securing some special advantage at the expense of the State for their own localities than in cutting down State expenses, and thus saving the taxpayers from unnecessary taxation. This is notably the case when the appropriations must be accepted or rejected as a whole by the executive, for in the many items of the long appropriation bills there may be jobs or open steals which can accrue to the benefit only of the contractors who have been active in securing the adoption of the item by the legislators. The Federal appropriation bills must be signed or vetoed by the President as a whole, and he cannot veto one or more items of them. His only remedy is to veto the whole bill, which may cause serious inconvenience to the departments of government for which the appropriations were made. To check,

in a measure, corruption in legislative appropriations, the constitutions of fourteen States allow the executive to disapprove of any items in an appropriation bill, and experience has proved the utility of this grant of power. In certain municipalities, the expenditure is governed by special boards or commissions, and sometimes from the capital of the State. It is, however, a safer rule to allow each locality to determine its own expenditure. "The General Assembly shall not impose taxes upon counties, cities, towns, or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes; but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes." [1] Here the Legislature is forbidden to interfere in any way with local finances, and this can be the only safe rule. In a town meeting, where all are equal, have an equal voice in the conduct of affairs, and are equally interested in the assessing and collecting of taxes, extravagance and wastefulness are more apt to be more carefully guarded against than where expenditure is incurred and taxes imposed by a small body it may be of interested persons. In this instance local self-government should be the rule. In a city where but a small proportion of the inhabitants are taxpayers,[2] and where

[1] Missouri (1875), Art. x, § 10.

[2] It is estimated that but eight per cent. of the whole population pay State taxes.

all are given an equal voice in determining the city expenditures, it is natural that corruption should prevail. For those who do not pay taxes, and who form the larger party, will have no interest in keeping down expense; no matter into what extravagance they enter, they do not suffer, and bear no share in the burdens entailed.[1] For this reason it has been proposed to limit the suffrage in cities to those who are possessed of sufficient property to have a real interest in the management of city expenditure, which has such an influence on taxation. In some States, the constitutions place limits on the power of taxing for municipal purposes; but a more radical measure is needed to check the increasing wastefulness of city expenditure.

Debts.

But expenditure is not limited to the revenue of the State, and possessing credit, or the power of incurring debt, the States have not scrupled to use it freely and often with disastrous results. In the case of the Federal government, large debts have been contracted when extraordinary demands were made on the government to protect the property of its subjects, and to preserve its own existence. But, generally speaking, the national debts have been rendered necessary by wars, and have been paid off as soon as circumstances would permit. The rule has been never to incur a debt without at the

[1] See note, page 185.

same time providing for its extinguishment. When the Federal government, at the close of the Revolution, assumed the debts contracted by the States during that struggle, the total debt amounted to $75,400,000; the troubles with France and Algiers increased this debt, and by the war of 1812 it was increased to $127,000,000. A period of peace following allowed a rapid reduction of the debt, until in 1836 the government was practically out of debt, and had had for some years a surplus revenue which had invited waste and extravagance. From 1838 to 1850, with many fluctuations, the national debt on the whole increased, and on the outbreak of the Rebellion began to increase beyond all experience. In 1860 it stood at $64,800,000, and in 1866 had touched its highest point, $2,773,200,000. Since that year, with the exception of the years between 1877 and 1879, a decrease in the debt almost as unparalleled as its creation has been effected, and since 1879 all the surplus revenue, owing to the more prosperous condition of the country, which has largely increased the returns from taxation, has been applied to debt reduction.

A debt can never be a blessing, for it represents something that has been consumed or destroyed. Yet it is questioned whether the present policy of paying off the debt so rapidly is a wise one. Unless so applied the surplus revenues would accumulate and lie idle in the Treasury, thus depriving the country of so

much of its circulating medium which is essential to conduct the exchanges. At present the only way in which this accumulation can be prevented is by putting the money again into circulation by purchasing bonds,—the evidences of the debt. But as the credit of the government has been good a large amount of trust and other funds which require specially safe investment, have been placed in these bonds ; and if the bonds are called in and cancelled, in the lack of other as safe investments, a serious crisis may be anticipated. Pay off the debt by all means, but let it be done so that no injury may be done to individual interests. A more gradual reduction is a wiser policy, and a radical reduction in taxation would offer a substantial relief to the industries and trade of the country.

The history of the Federal debts, however interesting as an economic study, offers little in illustration of State agency, and for this recourse must be had to the debts contracted by the States, the purposes for which they were contracted, and the manner in which they have been managed. They form, too, a comparatively recent experience, for in 1830, the States of the Union owed but $13,000,000, and the first impetus to debt-creating was felt in the six or seven years following. The credit of the States was good, and the conditions of the country were prosperous ; this led to speculation of all kinds, and this speculative mania was greatly assisted by the forma-

tion of a large number of banks which issued paper money. Vast schemes of public works were undertaken by the States, and their credit was freely used, either for its own ventures or to aid private corporations in making improvements. For example, in 1840, Pennsylvania had a funded debt of $40,000,000, of which no less than $30,000,000 had been incurred for constructing railroads and canals. In 1838, the total debts of the States (eighteen in number) were in round figures $170,800,000, of which $60,200,000 had been incurred for canals, $42,800,000 for railroads, and $52,600,000 for banking.[1] Many of these undertakings resulted unprofitably, as they were not required by the population or trade of the country, and they were in their nature investments from which no returns could be expected for a long period; and when the mania was over and the interest on these debts must be provided, great complaint was made, and there was much talk of "repudiating" these debts. Michigan and Mississippi denied their obligations, while other States resorted to subterfuges which were dishonest. The majority of the States paid their obligations. But the lessons of this experience were soon forgotten, and at present the State debts have attained such an amount as to form a heavy burden on the resources of the country.

It was early seen that the State could not hope

[1] These figures are taken from a table prepared by the Comptroller of the Stat of New York. In 1843, or five years later, the Congressional Committee estimated the total debt of the States to be $207,800,000.

to construct, equip, and maintain railroads in competition with private enterprise, because it had no definite policy. Yet State aid was lavishly granted to railroads and other private corporations on the ground that these enterprises contributed to the prosperity and advancement of the State, and were to that extent public undertakings. "When the construction of railways and canals was first entered upon by an expenditure of public funds to any considerable extent, the States themselves took them in charge, and for a time appropriated large sums and incurred immense debts in enterprises, some of which were of high importance and others of little value, the cost and management of which threatened them at length with financial disaster, bankruptcy, and possible repudiation. No long experience was required to demonstrate that railways and canals could not be profitably, prudently, or safely managed by the shifting administration of a State government; and many of the States not only made provision for disposing of their interest in works of public improvement, but in view of a bitter experience of the evils already developed in undertaking to construct and control them, they amended their constitutions so as to prohibit the State from engaging anew in such undertakings."[1]

These constitutional prohibitions, however, were ingeniously evaded on the plea, that while the *State*

[1] Cooley: "Constitutional Limitations," p. 262, note.

itself could not enter into such works, the *municipal corporations*, which are only the agents of the State, might do so, and this has resulted in the granting of vast sums to many doubtful enterprises, and the creation of burdensome debts and consequent taxation. The constitutionality of legislative acts authorizing municipal aid to railways in the absence of any express prohibition in the State constitution, has been maintained by the State courts, and in 1872 by the Supreme Court of the United States, on the ground that highways, turnpikes, canals, and railways, although owned by private individuals under public grants or by private corporations, are governmental affairs. There can be no question, therefore, on the validity of such acts. As to their policy, however, there is much room for doubt, and the evils that have resulted from an exercise of this power are sufficient to condemn it. "A catalogue of these evils would include the squandering of the public domain; the enrichment of schemers, whose policy it has been, first, to obtain all they can by fair promises, and then to avoid as far and as long as possible the fulfilment of the promises; the corruption of legislation, the loss of State credit, great public debts recklessly contracted for moneys often recklessly expended; public discontent because the enterprises fostered from the public treasury and on the pretence of public benefit, are not believed to be managed in the public interest; and, finally, great financial panic, collapse, and disaster" (*Cooley*).

This experience has not, however, been barren of results, and in no other respect have the State constitutions undergone such radical changes as in the sections relating to public credit. For example, in New York the State may not contract debt except to meet casual deficits in the revenue (and in this case the debt must not exceed $1,000,000) ; to suppress insurrections and repel invasion ; and " to some single work or object," which must be separately approved by the people at the general election, and must be accompanied by such a tax as will discharge the annual interest on the debt, and the principal within eighteen years. And like limitations are imposed on the debt-contracting power of the subdivisions of the State. " Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation, or private undertaking. * * * No county, city, town, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association, or corporation, or become, directly or indirectly, the owner of stock in or bonds of any association or corporation, nor shall any such county, city, town, or village, be allowed to incur any indebtedness, except for county, city, town, or village purposes,[1] "—but provision may be made for the poor

[1] Art. viii, §§ 10 and 11, adopted in 1874. " Ohio, West Virginia, Indiana, Michigan, Missouri, Minnesota, Nevada, Alabama, Florida, Arkansas, Georgia, Mississippi and Texas, all strictly limit the borrowing power of the State, without allowing even a resource to the popular sanction for an increase ; the same States prohibit the loan of municipal credit. In Missis-

and a few other objects. The State debt may be limited, as in Louisiana, where the constitution provided that the State debt should not exceed $25,000,000 before 1890 (omitted in constitution of 1879). Or the debt of the minor divisions of the State may be limited, as in Pennsylvania: "The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as herein provided, shall never exceed seven per centum upon the assessed value of the taxable property therein" (1873, Art. ix, § 8).

There are a large number of objects for which debts may be contracted and bonds issued by State or local governments, and which are essential to the public welfare or safety. For example, the public highways are a public care, and if a new road must be opened and the taxation is not sufficient to meet the expense, bonds may be issued. If the total bonded debt of the States and local divisions be analyzed, it will be found to have been created for the following objects, many of which were doubtless necessary, others of doubtful utility, and still others which were due to fraud:—bridges, cemeteries, fire department; improvement of harbors, rivers, wharves, canals, and water-power, parks and public

sippi and Nebraska the power of the State to contract debt is limited, that of the municipalities is based upon popular vote; in Virginia, Tennessee, and Maine, the State is restricted, but their constitutions are silent as to the municipalities; in New Hampshire and Connecticut the State power is unlimited, but that of municipalities is restricted."—*International Review*, Sept., 1878.

places; railroad and other aid (the largest item), schools and libraries, sewers, streets, war expenses (bounties, etc.), and water-works. Many of these are for city purposes and apply only to such localities; and it is in these places where the greatest care should be taken to guard against jobbery and corruption, for the opportunities are tenfold greater than in the rural districts. But the way is open in any locality for wasteful expenditure, and there is no standard by which to judge of what will and what will not prove of benefit to the community. If there are too few restrictions on the borrowing power of the State or municipality, the door is open to corruption; and if too many limitations are imposed, the community may suffer from a lack of the proper instruments for attaining its highest prosperity. "It can probably be demonstrated that there is no one act which can be performed by a community, which brings in so large return to the credit of civilization and general happiness, as the judicious expenditure, for public purposes, of a fair percentage of the general wealth raised by an equitable system of taxation. The fruits of such expenditure are general education and general health; improved roads, diminished expenses of transportation, and security for life and property. And it will be found to be a general rule, that no high degree of civilization can be maintained in a community, and indeed, that no highly civilized community can exist, without comparatively large

taxation; the converse of this proposition, however, at the same time not being admitted, that the existence of high taxes is necessarily a sign of high civilization."[1]

The "repudiation" of debts on the part of States has already been briefly mentioned (p. 13), but the importance of the subject justifies a return to it at this point. The word *repudiation* in the sense in which it is commonly used, that is, of confiscation, was first employed in a message of the governor of Mississippi, but the practice of thus dealing with indebtedness was not confined to the Southern States. It is somewhat curious that while debts against individuals may be strictly enforced, the debts of States, which, so far as morality is concerned, stand on much the same basis, cannot be enforced. To borrow money and then deny the obligation would subject the individual to severe punishment; but a State may do so and the creditor has no remedy against this open robbery. Of course the credit of the State is affected, but this consideration does not appear to have any restraining effect. The cause of this singular exemption is the eleventh amendment to the Federal Constitution, which provides that no suit in law or equity shall be maintained against any State by the citizen of another State or by citizens or subjects of

[1] First Report of the New York [State] Tax Commission, p. 12. The two reports prepared by this commission are extremely valuable, but are, unfortunately, out of print.

any foreign State. In fact, this amendment was framed and adopted for the purpose of shielding repudiating States from the consequences of their act. Under it States have contracted debts and afterward refused to recognize their validity. Their creditors have no remedy, as they are debarred from bringing suit against the State, and they can do nothing to protect themselves against loss. There have been attempts made to evade the eleventh amendment. In 1879 Louisiana repudiated her debt, and the State of New Hampshire passed a law providing that any citizen of the State might assign to it the bonds of Louisiana, and then suit would be brought in the name of New Hampshire against the repudiating State.[1] And a like law was passed in New York. In other words, the question was raised whether a State, as assignee or as the agent of its citizens, could do what was denied to its citizens by the Federal Constitution. The question was decided in the negative; that while the suit was brought in the name of a State, the citizens of the State were the real parties to the suit, and under the Constitution this could not be done. The soundness of this decision cannot be questioned, however much it may appear to be opposed to strict justice. The only means for compelling a delinquent State to recognize its debts and to fulfill its obligations under them is to repeal the eleventh amendment; but before this

[1] Act of the General Court of New Hampshire, July 18, 1879.

can be done many important questions as to the process to be employed for carrying out a decision against a State, must be settled.

Coinage and Currency.

The subject of money and its relations to the social conditions of a people belongs more properly to a treatise on political economy than to one on government; but as government has interfered more or less with the circulating medium, it is necessary to speak of it here. By money is meant some commodity that is in universal demand, of known value, and that may serve as a medium of exchange and a measure of value. Such a commodity may be salt, tobacco, or shells; but the precious metals, gold and silver, have been almost universally accepted as money among nations. As they circulate freely from hand to hand in exchange for other commodities they are *current*, and serve as *currency*. There is no mystery about the nature of money or currency. It is merely some commodity in the terms of which the values of other commodities are expressed, and which will be taken in exchange for these commodities. Thus if a coat will sell for twenty dollars, and twenty dollars will purchase sixteen bushels of wheat, the coat will be of the same value with that quantity of grain, and under a condition of barter would have been exchanged one for the other. But in such a system of barter it would be

difficult to find two persons so situated as to be willing to make this exchange; no measure of their values would exist save the desires of the exchangers; and in the case of many commodities no division could be made in case the whole was not wanted. These difficulties have all been overcome by the adoption of a currency which is (like the metals) divisible and portable without loss of value; and is easily recognized and of known and, generally speaking, stable value.[1] But the mere fact that these metals have been selected to serve as currency does not alter their value, nor does it make the exchange any the less barter. It is a matter of convenience alone.

It is essential that while these metals have been selected as money, there should be some means of determining as accurately as possible their value, and of providing convenient quantities to serve as currency. Hence the matter of coinage has been left to the Federal government, and as this guarantees the weight, fineness, and value of the coins made, it affords protection against fraud. In theory the coinage of metals is only a matter of convenience; to render unnecessary the determination of the quantity and quality of the metal at every

[1] It is not meant that gold and silver do not fluctuate in value, for when long periods of time are considered it is seen that they have been subject to great alterations in their values. Thus with respect to one another, a little after the middle of the thirteenth century the value of gold to silver was ten to one; at the conclusion of the same century it was twelve and one half to one; in the middle of the next century it was nearly fourteen to one; while at present it is between sixteen and seventeen to one.

exchange; and no value is conferred by coinage[1] save in the copper and minor pieces, which are merely tokens. The *eagle* is supposed to contain gold to the value of ten dollars, though in reality coin is worth a little more than bullion on account of the labor expended in coining it. The first silver coin was made by the Federal government in 1794, and the first gold coin in 1795.

But when it is intended to make two coins of the same value out of different metals, it becomes essential to determine the relative values of the two metals in the markets of the world, in order to determine the quantity of metal that must be put in each to make their values really equivalent. For example, the United States has always coined a dollar piece both of silver and of gold, and the quantity of metal in each has been determined as accurately as may be in order that they may each represent the same value. But the relative values of these metals cannot be determined by law, but are subject to change as much as is the value of any other commodity. And if the estimation of the relative value proves in error, a natural law comes

[1] "Congress cannot regulate the value of money until it can make a man give for a gold dollar one grain of wheat more than supply and demand force him to give, or yield a gold dollar for one grain less than supply and demand will give him for it. To regulate the value of money is to fix prices, and Congress has never tried to do that since it has existed. Congress can determine how heavy a piece of metal of a certain fineness shall be the standard of value, just as it determines how long a bar shall be the standard of length; but it cannot regulate the value of a coin any more than it can regulate a physical object to make it longer or shorter than it is."—*Sumner.*

into operation, by which that currency which is overvalued will drive out from circulation that which is undervalued, for it is in the interests of debtors to pay their debts with the poorer currency. When the first gold and silver coins were made, the ratio of fifteen to one was taken ; that is, a pound of gold was worth just fifteen times as much as a pound of silver. Events proved that gold was undervalued ; for while silver, being the cheaper currency, was universally used, gold was at a premium and was not in circulation. So that until 1834 the law gave the country a silver currency as the gold was melted and exported. In 1834 a new ratio of sixteen to one was adopted, which also proves to have been in error ; for gold was now overvalued and silver went out of circulation, being the better metal to export.[1] And herein lies the chief difficulty in the so-called "silver question." Congress has attempted to fix once for all a relation between the value of gold and that of silver, a relation that is affected by influences acting independently on either metal, and thus continually altered ; to make both metals a legal tender; and to provide for free coinage of both. The only result of such a measure would be to have at one time gold and at another time silver, as fluctuations in the value of these metals take place, the poorer or overvalued metal being that which will be in circulation.

[1] See Sumner's "History of American Currency," p. 103.

A grave error was committed by Congress when it passed the act authorizing the coinage of the silver dollar (February 28, 1878). Owing to a number of causes, which were due to natural laws and could not therefore have been altered by legislation, silver fell greatly in value as compared with the value of gold and other commodities. So that instead of the ratio being as fifteen or sixteen to one, it fell to seventeen and eighteen to one, and silver was to that extent depreciated. The act of 1878, however, did not recognize this condition, but adopted the ratio of fifteen and a half to one, or about that which existed in 1847, and put into the coin but four hundred and twelve and a half grains Troy of standard silver, whereas in order to be worth a dollar under the market-price of silver, about five hundred and fifteen grains were required. The result is that what is known as the standard silver dollar is worth but about eighty-two cents in the markets of the world, and is as strictly an unexportable currency as is the greenback, for other nations will accept only gold in settlement of balances due them.

In place of using gold and silver coins as currency, paper-money representing the value of these coins may be issued. Such notes are more convenient, less costly, and quite as efficient for the purpose as the coins themselves; they are, however, but *representatives* of value, and possess no intrinsic value. They are promises to pay, which may be redeemed

in or exchanged for coin. These notes may be issued by banks or by the government. Did the law provide that for every note issued the issuer must hold coin to the same value, such an issue would be perfectly safe and legitimate, for at any time the note could be redeemed in coin. The gold and silver certificates issued by the Federal government are such issues, for they represent deposits of gold and silver with the government. But when notes are issued to exceed the value of the coin held for redemption, they are based not upon actual value, but upon credit; and they will circulate at their face value only so long as the public have confidence in them. When this confidence is shaken or destroyed, the notes will be depreciated, as they cannot be exchanged for gold or silver to the amount they represent.

The evils attending the over-issue of paper currency had been experienced in the colonies, and the suffering entailed by this and like errors was enormous, both before and during the Revolution. Taught by this experience, the States were prohibited from issuing bills of credit, or making any thing but gold and silver a tender in payment of debts. This would seem to prohibit the issue of any paper-money

[1] Banking is essentially the borrowing and lending of capital, and with institutions which confine their operations to this object we have nothing to do; it is only when they issue circulating notes intended to serve as a currency, that they may properly be considered with reference to State agency. Banks of deposit are but corporations deriving their charter from the State, and differing from other corporations only with respect to their functions.

on the part of the States, and such was doubtless the intention of the framers of the Constitution. But in time a narrow definition was adopted for a bill of credit, and no check was left on the issue of paper-money under State laws. Thus it has been judicially determined that a bill of credit is a promise to pay, which must be issued by the State, must involve the faith of the State, and be designed to circulate as money on the credit of the State, in order to come within the meaning of the Constitution. So that, while the State itself cannot issue such notes, a bank chartered by the State may do so. A more liberal construction would have prevented the issue of bank-notes by State banks; but under this interpretation a banking corporation may issue bills, even though the State owns the entire stock, the Legislature elects the directors, the faith of the State is pledged for the redemption of the bills, and they are made receivable for all public dues.[1]

The system of "banking" which existed before the Rebellion, and in which the issue of circulating notes played a very important part, was notoriously bad. The banks were chartered by the States; no limitations were placed on their power to issue notes, and no precautions were taken to protect the holders of the notes from loss. The business of these banks was not of necessity confined within the State which chartered them, but might be conducted

[1] Darrington *vs.* State Bank, 13 How., 12.

and their notes circulated in other States, where their true condition was not known. "The speculator comes to Indianapolis with a bundle of bank-notes in one hand and the stock in the other; in twenty-four hours he is on the way to some distant point of the Union to circulate what he denominates a legal currency authorized by the Legislature of Indiana. He has nominally located his bank in some remote part of the State, difficult of access, where he knows no banking facilities are required, and intends that his notes shall go into the hands of persons who will have no means of demanding their redemption."[1]

In order to clearly comprehend the results of such a system, it should be remembered that these notes did not represent capital or value, and were possessed of no value whatever. They were, however, exchanged for commodities which did have value, and they thus passed into circulation; the loss, when it did come, falling upon the holder of the note, who had no remedy. "Of all contrivances for cheating the laboring classes of mankind, none has been more effectual than that which deludes them with paper-money. This is the most effectual of inventions to fertilize the rich man's field by the sweat of the poor man's brow. Ordinary tyranny, oppression, excessive taxation—these bear lightly on the

[1] Message of the governor of Indiana, 1853. The history of this period of "wild-cat" banking is told by Gouge, in his "History of Paper-Money in the United States."

happiness of the mass of the community, compared with fraudulent currency and the robberies committed by depreciated paper."—(*Daniel Webster.*)

In some of the States steps had been taken to check in some way this condition of affairs. Thus, in the New England States existed a voluntary system known as the "Suffolk Bank system," in which the banks included in the arrangement were required to redeem their notes daily in Boston at par. Like arrangements existed in some other States, as Ohio and New York. In Louisiana alone existed any banking law that provided for a suitable reserve with which to redeem notes.[1] "In May, 1863, some one thousand five hundred banks, organized under State laws, furnished the people of the United States with a bank-note currency. In some States, banks were compelled to protect—partially at least—the holders of their notes against loss, by deposits of securities with the proper authorities. In other States, the capital of banks (that capital being wholly under the control of the managers), was the only security for the redemption of their notes. In some States there was no limit to the amount of notes that might be issued, if secured according to the requirements of their statutes, nor any necessary relation of circulation to capital. In

[1] This act, which was passed in 1842, required a specie reserve to be kept at all times equal to one third of the combined circulation and deposits, and the remaining two thirds to be invested in strictly commercial paper, having not more than three months to run, and not renewable at maturity. See *Bankers' Magazine*, for November 1877.

others, while notes could be issued only in certain proportions to capital, there was no restriction upon the number of banks that might be organized. The notes of a few banks, being payable or redeemable at commercial centres, were current in most of the States, while the notes of other banks (perhaps just as solvent) were uncurrent beyond the limits of the States by whose authority they were issued. * * * The direct losses sustained by the people by an unsecured bank-note circulation, and the indirect losses to the country, resulting from the deranged exchanges, caused by a local currency constantly subject to the manipulations of money-changers, and from the utter unsuitableness of such a currency to the circumstances of the country, can be counted by millions."[1] Such was the situation in the first years of the Rebellion. In 1861 Congress had authorized the issue of $50,000,000 of Treasury notes intended for circulation, and in 1862 passed the Legal Tender Act, by which these notes were made a legal tender in payment of private debts, and also of all public dues except duties on imports and interest on the public debt.[2] And under further issues gold and silver disappeared from circulation and paper-money formed the circulating medium of the country. These notes differed in no respect from those put into circulation

[1] Report of the Secretary of the Treasury for 1868.

[2] The constitutionality of this measure is discussed in Hepburn *vs.* Griswold, 8 Wall, 603, and Knox *vs.* Lee, 12 Wall, 457. On legal tender laws, see Sumner's "History of American Currency," p. 197. Also Mr. Brooks Adams' article in the *International Review* for June, 1879.

by State banks, save as respects the credit of the issuer. They did not represent gold or silver or capital, but debt. Pressed by its necessities the government issued its promises to pay in exchange for the food, arms, clothing, and other commodities it required, and for fear that the people would not accept these notes they were made a legal tender. So that they resulted in being a forced loan to the government by the people, because under the law they were compelled to receive these promises in exchange for their products. These notes are popularly known as "greenbacks," and since 1879 have been redeemable in coin.

In February, 1863, under the pressure created by the war, the National Bank Act was passed.[1] The essential features of this system were: the formation of banks to issue paper-money; the investing of a part or the whole of the capital of these banks in United

[1] Twice before this had the Federal government chartered banks. In order to carry out Hamilton's scheme of strengthening the central government, a national bank was founded in 1790, and the government subscribed one fifth of the capital. This bank rendered material assistance to the government in the management of the national finances, but very little is known of its internal history. An attempt to renew its charter in 1811 failed, and it was compelled to wind up its affairs, which it did with a profit to its stockholders. The war of 1812 created such pressing demands on the national finances that in 1816 a second national bank was established, the government again taking one fifth of the stock. It was not to issue notes under five dollars, nor to suspend specie payments under a heavy penalty. In return the government was pledged not to charter any other bank during the twenty years this bank was to run, so that it was practically a monopoly. The history of this bank is so intimately connected with the political events of the period that no general account of its actions can be here given; it is very fully and ably given in Prof. Sumner's "Life of Jackson." The arguments for and against the power of the government to charter such banks are to be found in the writings of Hamilton and Jefferson.

States government bonds; and on depositing with the treasurer of the United States these bonds as security for redemption, these banks might receive circulating notes for ninety per cent. of the current value but not exceeding the par values of the bonds. These notes were to be receivable at par in all parts of the United States for taxes, excise, public lands, and all other government dues, except duties on imports; and also for all salaries and other debts owing by the United States, except interest upon the public debt; and, finally, a limited reserve was to be held by each bank to insure the redemption of its notes in lawful money (greenbacks or specie).

There is much to be said in defence of this system of national banks, and yet there is a strong feeling against it. It was created at a time when little attention could be paid to its details, for, as in the case of many other measures adopted at the same time, the necessities of the government formed the strongest plea in its favor. The circulation of the State banks was taxed out of existence in 1865, and thus the power of issuing paper-money belonged to the Federal government and national banks alone. As compared with the "wild-cat" banking which existed before the war, the new system was undoubtedly a vast improvement, for it supplied the country with a circulating medium that was of uniform value, and one that was secured by the credit of the Federal government. Another argument in its favor was that a market could thus be formed for the bonds which the

government was forced to issue in order to meet the enormous expenditure caused by the war; for the banks could only issue their notes after they had purchased some of these bonds.

On the other hand it is urged that these banks are especially favored and have derived large profits from these privileges; that the government itself could have extended its own issues of "greenbacks" to almost any extent, and could thus have gained the profit arising from this circulation; that there was no necessity of granting any privileges to find a market for Federal bonds, for the State banks had already invested the larger part of their capital in them; and, finally, that the notes issued by these banks expanded an already too abundant currency, and thus brought about the evils of an inflated currency,—high prices, fictitious values, increased expenditure and debt, and a derangement of trade and industry. It is urged that the power to issue paper currency belongs to the government, and should not be transferred to a corporation; that to Congress alone belongs the power to regulate the currency, and, therefore, Congress alone should exercise it.[1] There is much to be said on either side, but the main point to be gained is a stable paper currency which is at all times redeemable in gold, and will pass current at its full value.

[1] See "Our National Currency," by Amasa Walker, in the *International Review* for March, 1874. See also the able reports of Mr. Jno. Jay Knox, the Comptroller of the Currency.

NOTE TO P. 161.

It is of course the case that all persons who pay rent or consume goods must contribute, in the proportion of their several expenditures, to the burden of the taxes, as the amounts assessed upon the owners of property, the so-called "tax-payers," are added by these to the rentals of their buildings and to the prices of their goods.

As all consumers are therefore tax-payers, the common opinion, that the community is divided into a tax-paying and a non-tax-paying class, rests on error, and is responsible for much disastrous misapprehension on the part of the poorer classes as to their real interests in questions of public expenditure. It is certainly true, however, that such misapprehension is so deeply grounded as to influence and decide votes, and as the votes of the laboring classes are at present almost always given in favor of the largest municipal expenditure, the suggestion of limiting municipal suffrage to the direct tax-payers, at least until the indirect tax-payers can be better educated, has much to commend it.

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